

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

SAGINAW CHIPPEWA INDIAN TRIBE  
OF MICHIGAN, on its own behalf and as  
*parens patriae* for its members,

Case No. 05-10296-BC  
Hon. Thomas L. Ludington

Plaintiff,

and

THE UNITED STATES,

Plaintiff-Intervenor,

v

JENNIFER GRANHOLM, Governor of the  
State of Michigan; MIKE COX, Attorney  
General of the State of Michigan; JAY B.  
RISING, Treasurer of the State of Michigan,  
each in his/her official capacity; and the STATE  
OF MICHIGAN,

Defendants.

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**DEFENDANTS' ANSWER TO COMPLAINT IN INTERVENTION  
OF THE UNITED STATES**

The State Defendants answer the Complaint in Intervention of the United States as follows:

**I. NATURE OF THE ACTION**

1. Admit that Paragraph 1 purports to describe the action, except deny any remaining averments of Paragraph 1.

**II. JURISDICTION**

2. Admit that the Saginaw Chippewa Indian Tribe of Michigan (Tribe) seeks to enforce alleged constitutional and other law of the United States in Paragraph 2 that would

normally grant jurisdiction to the federal court, except deny that the court has jurisdiction to award damages or to deprive the state of all jurisdiction over the alleged "Isabella Reservation."

### **III. VENUE**

3. Admit that if the court properly has jurisdiction then venue is proper.

### **IV. PARTIES**

4. Admit the first and second sentences. Admit that the Saginaw Chippewa Indian Tribe of Michigan has governmental power over land owned in trust by the United States for the Tribe, except deny the remaining averments of the third sentence.

5. Admit that United States has jurisdiction to prosecute serious crimes committed by Indians pursuant to the Major Crimes Act, 18 U.S.C. § 1153, on land it owns in trust for the Saginaw Chippewa Indian Tribe of Michigan, except without knowledge or information sufficient to form a belief as to whether such jurisdiction is "exclusive" in nature. Without knowledge or information sufficient to form a belief as to the truth of the remaining averments in Paragraph 5, except deny that the alleged "Isabella Reservation" exists, and deny that any land in Isabella County is Indian country as that term is used in 18 U.S.C. § 1151 and federal law other than land held in trust by the United States for the Saginaw Chippewa Indian Tribe of Michigan.

- 6-7. Admit.

8. Admit, except deny that the alleged "Isabella Reservation" exists.

## **V. DESCRIPTION OF THE ALLEGED "RESERVATION LANDS" AT ISSUE**

9. Without knowledge sufficient to form a belief about the truth of the averments in paragraph 9.

10. Admit, except defendants will identify the Treaty with the Saginaw, Swan Creek and Black River bands of Chippewa Indians, 11 Stat. 633 (August 2, 1855), as the "1855 Saginaw Treaty."

11. Admit that article 1 of the 1855 Saginaw Treaty partially states as averred, except deny the remaining averments of paragraph 11.

12. Admit, except defendants will identify the Treaty with the Chippewa of Saginaw, Swan Creek and Black River, 14 Stat. 657 (October 18, 1864), as the "1864 Saginaw Treaty."

13. Admit that article 2 of the 1864 Saginaw Treaty partially states as averred, except deny the remaining averments of paragraph 13.

14. Deny.

## **VI. ACTIONS OF THE DEFENDANTS**

15. Admit that land owned in trust by the United States for the Saginaw Chippewa Indian Tribe of Michigan is Indian country as that term is used in 18 U.S.C. § 1151 and federal law, except deny any remaining averments of Paragraph 15.

16. Admit that defendants do not recognize the existence of the alleged "Isabella reservation." Admit that land held in trust by the United States for the Saginaw Chippewa Indian Tribe of Michigan is the only land in Isabella County that defendants recognize as Indian country as that term is used in 18 U.S.C. § 1151 and federal law. Deny any remaining averments of Paragraph 16.

17. Deny.

18. Admit that the State of Michigan, of whom Jennifer Granholm is the Governor and Mike Cox is the Attorney General, maintains that the alleged "Isabella Reservation" is not Indian country. Admit that the State of Michigan applies state law and asserts state jurisdiction over the Tribe and its members on land other than land held in trust by the United States for the Saginaw Chippewa Indian Tribe of Michigan. Deny any remaining averments of Paragraph 18.

19. Admit that the State of Michigan, of whom Jennifer Granholm is the Governor and Mike Cox is the Attorney General, maintains that the alleged "Isabella Reservation" is not Indian country. Admit that the State of Michigan imposes state income taxes on tribal members who live and work on land other than land held in trust by the United States for the Saginaw Chippewa Indian Tribe of Michigan. Deny any remaining averments of Paragraph 19.

20. Admit that defendants will continue to enforce state law on non-trust land within the alleged "Isabella Reservation" as allowed by federal and state law, except deny any remaining averments in paragraph 20.

#### **VIII. PRAYER FOR RELIEF**

21-23. Deny.

#### **AFFIRMATIVE DEFENSES**

1. Defendants incorporate the answers to the averments of the complaint in paragraphs 1-23 above.

2. The predecessors of the Saginaw Chippewa Indian Tribe ceded all of their aboriginal rights to land in Michigan through a series of treaties culminating in the 1836 Saginaw Treaty. The 1855 Saginaw Treaty and the 1864 Saginaw Treaty did not, therefore, reserve any aboriginal rights for the Saginaw Chippewas but merely provided a designated area from which

they could choose land like any other individual citizen of Michigan and the United States pursuant to United States law.

3. The Saginaw Chippewa Indian Tribe was dissolved pursuant to the 1855 Saginaw Treaty. Congress also recognized that the Saginaw Chippewa Indian Tribe had been dissolved and jurisdiction over and care of individual Saginaw Chippewas had been committed to the State of Michigan in 1934.

4. The Saginaw Chippewa Indian Tribe and the United States have waited over 100 years to raise their claims that the five townships and two half-townships are Indian country. The citizens of Michigan and the state of Michigan have relied on this failure in transacting business, buying property, and conducting civil and criminal proceedings. The defense of laches and the impossibility doctrine, therefore, prevent the Saginaw Chippewa Indian Tribe and the United States from asserting their claims.

5. The Saginaw Chippewa Indian Tribe's alleged "Isabella Reservation" has been diminished or disestablished by the selection of lands by individual Saginaw Chippewa Indian Tribe members as citizens of the State of Michigan. Michigan has exercised jurisdiction over the alleged "Isabella Reservation" for many years without dispute. The vast majority of people within the alleged "Isabella Reservation" are not members of the Saginaw Chippewa Indian Tribe of Michigan.

6. The State of Michigan denies that the United States is entitled to relief for the costs of this action.

7. Activities of the Saginaw Chippewa Indian Tribe, tribal members, and non-members within the alleged "Isabella Reservation" significantly impact the public health, safety, welfare, and the environment of the State of Michigan. For example, many people travel by

roads maintained by non-Tribal governments on land owned in fee simple by non-Tribal members that units of state government patrol and protect. Units of state government also provide police protection, fire services, educational, and many other public services to all residents of the alleged "Isabella Reservation." The State of Michigan has, therefore, authority within the alleged "Isabella Reservation" to apply its state laws that protect the public health, safety, and welfare, and the environment.

8. The Saginaw Chippewa Indian Tribe and the United States have failed to state a claim for relief sought.

9. *Res judicata* or *collateral estoppel* bars this entire litigation or some of the issues raised in the complaint based on the decisions of the United States Indian Claims Commission.

WHEREFORE, Defendants respectfully request that this Court:

- A. Dismiss the Complaint with prejudice.
- B. Declare that the State of Michigan has jurisdiction over all land and people within the alleged "Isabella Reservation" except for Saginaw Chippewa Indian Tribal members acting on land held in trust by the United States for the Saginaw Chippewa Indian Tribe.
- C. Declare that the State of Michigan has jurisdiction over all land and people within the alleged "Isabella Reservation," including activities on land held in trust by the United States for the Saginaw Chippewa Indian Tribe, where that activity significantly affects the health, safety, welfare, and environment of the citizens of Michigan off of trust land,
- D. Declare that the Saginaw Chippewa Indian Tribe must collect taxes on sales to non-members and members in accordance with law, and

E. Award Defendants' costs and attorneys' fees so wrongfully incurred.

Respectfully submitted,

Michael A. Cox  
Attorney General

/s/ Todd B. Adams  
Todd B. Adams (P36819)  
Assistant Attorney General  
Counsel for State Defendants  
Environment, Natural Resources,  
and Agriculture Division  
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Dated: November 30, 2006

s:cases/2005/saginaw chips(boundary)/pleadings/

#### **PROOF OF SERVICE**

On the date below, I directed my secretary, Robbin S. Clickner, to electronically file the following document with the Clerk of the Court, U.S. District Court, Eastern District, using the ECF system, which will send notification of such filing to all counsel of record.

#### **Defendants' Answer to Complaint in Intervention of the United States**

November 30, 2006

/s/ Todd B. Adams

Todd B. Adams (P36819)  
Assistant Attorney General