UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

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

Plaintiff,

and

THE UNITED STATES,

Proposed Plaintiff-Intervener

vs.

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; STEVEN CHESTER, Director of the Department of Environmental Quality of the State of Michigan, each in his/her official capacity,

Defendants.

Case No. 05-10296-BC

Hon. Thomas L. Ludington

REPLY TO UNITED STATES' RESPONSE TO CITY OF MT. PLEASANT'S MOTION TO INTERVENE

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REPLY TO UNITED STATES' RESPONSE TO THE CITY OF MT. PLEASANT'S MOTION TO INTERVENE

The United States takes the position that the City of Mt. Pleasant should not be permitted to intervene as a matter of right, however, it does not oppose the City's permissive intervention, so long as the intervention is conditioned on the City not being permitted to designate its own experts and not being allowed to engage in discovery that is not coordinated with the State.

The City of Mt. Pleasant seeks full and complete participation in this suit as a party defendant. There is no basis to require that the City of Mt. Pleasant's role be limited in such a way that it must coordinate discovery with the State.

The Sixth Circuit Court of Appeals has indicated that the point to which a suit has progressed "is one factor in the determination of timeliness, not solely dispositive and that timeliness is to be determined from all the circumstances. *Michigan Ass'n for Retarded Citizens v. Smith,* 657 F.2d 102,105 (6th Cir. 1981), citing NAACP v. New York, 413 U.S. 345, 366, 93 S.Ct. 2591, 2603, 37 L.Ed.2d 648 (1973).

The court went on to explain:

> Among the other circumstances to be considered are these: (1) the purpose for which intervention is sought, *Hodgson v. United Mine Workers of America*, 473 F.2d 118, 129 (D.C. Cir.1972); (2) the length of time preceding the application for intervention during which the proposed intervenor knew or reasonably should have known of his interest in the case, *Stallworth v.*

> *Monsanto Co.*, 558 F.2d 257, 264 (5th Cir. 1977); (3) the prejudice to the original parties due to the proposed intervenor's failure after he knew of or reasonably should have known of his interest in the case promptly to apply for intervention, *Culbreath v. Dukakis*, 630 F.2d 15, 21 (1st Cir. 1980) and (4) the existence of unusual circumstances militating against or in favor of intervention, *Culbreath*, supra, 24 and *Stallworth*, supra, 266.
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> *MI Ass'n* at 105.

The City has been informed that apart from the exchange of expert reports, there has been no substantive discovery. A small amount of written discovery has been exchanged and no depositions have taken place. Although the present suit has been pending for a while, in its early stages.

The United States was permitted to intervene without restriction and filed its complaint on November 29, 2006. The parties disclosed expert witness materials August 1, 2007, have until November 2, 2007 for completion of rebuttal expert materials and discovery will remain open until March 7, 2008. The court has a status conference scheduled for December 6, 2007 and the filing deadline for dispositive motions is not until May 30, 2008.

There is no reason to force the City to "co-ordinate discovery with the State" as there are adequate safeguards in the Federal Rules of Civil Procedure to protect against discovery abuses. FRCP 33 limits the number of interrogatories that a party may submit to 25, FRCP 30 places limits on the time and length of depositions, FRCP 26(b)(2)(A) and (C) permits the Court to further limit the number and length of depositions and interrogatories and allows the court to limit discovery if it finds it to be unreasonably cumulative. Additionally a party may move for a protective order if it finds discovery to be unduly burdensome or harassing.

The United States has recognized the importance of the pending suit and has stated

"This case, which involves complicated historical and legal issues and important sovereign jurisdictional questions, should proceed rationally to develop a thorough record." *(U.S. Reply in support of its Motion for Modification of Case Management and Scheduling Order, page 2)*. At that time, the United States took the position that there had been no prejudice, reasoning that:

> The treaties in question that create the 'status quo of uncertainty' were signed about 150 years ago. The parties were involved in litigation in the early 1990's over related issue, but it was the Tribe who had to file this suit to finally resolve the matter. An additional 60 days can hardly constitute prejudice over an 'uncertainty' that was created 150 years ago. *(U.S. reply in support of its Motion for Modification of Case Management and Scheduling Order, pages 2-3)*

The City of Mt. Pleasant has a significant legal interest in the real property within its boundaries. For this reason it was involved as a party defendant in a suit filed back in 1991 concerning many of these same issues. A determination by this court that the area in dispute constitute "Indian country" pursuant to federal law has wide reaching impact on the City of Mt. Pleasant including the rights of the City of Mt. Pleasant to enforce its rules, regulations and laws, including, its ability to enforce zoning regulations. The State has no zoning issues as zoning is the product of local municipalities and is not required by the State.

WHEREFORE, for the reason set forth herein, the City of Mt. Pleasant requests that this court allow it to intervene as a Defendant as a matter of right or in the alternative, by permission without restriction.

Date: October 3, 2007

Respectfully submitted,

LYNCH, GALLAGHER, LYNCH,

MARTINEAU & HACKETT, P.L.L.C.

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CERTIFICATE OF SERVICE

I hereby certify that on October 3, 2007, I electronically filed **Reply to United States' Response to the City of Mt. Pleasant's Motion to Intervene** with the Clerk of the Court using the ECF system, which will send notification of such filing to the following: William A. Szotkowski, 1360 Energy Park Drive, Suite 210, St. Paul, MN 55108-5252; Patricia Miller, L'Enfant Plaza Station, P.O. Box 44378, Washington, DC 20026-4378; and Todd B. Adams, 525 W. Ottawa St., Fl. 6, P.O. Box 30755, Lansing, MI 48909.

I hereby certify that on October 3, 2007, I served by first class mail **Reply to United States' Response to the City of Mt. Pleasant's Motion to Intervene** on Sean J. Reed, 7070 E. Broadway Road, Mt. Pleasant MI 48858.

Date: October 3, 2007

Respectfully submitted,

LYNCH, GALLAGHER, LYNCH,
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