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,

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.
_____/

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

Magistrate Judge: Charles E. Binder

DEFENDANTS' BRIEF IN RESPONSE TO THE CITY OF MT. PLEASANT'S AND ISABELLA COUNTY'S MOTIONS TO INTERVENE

Defendants Jennifer Granholm, Mike Cox, Jay Rising, and the State of Michigan do not oppose the intervention of the City of Mt. Pleasant and Isabella County so long as their intervention does not substantially disrupt the litigation schedule or prejudice the parties.

ARGUMENT

I. Standard for Intervention as of Right

The Sixth Circuit has held that a proposed intervenor must establish four elements to intervene as of right under Federal Rule of Civil Procedure 24(a). They are that "(1) the motion

to intervene is timely; (2) the proposed intervenor has a substantial legal interest in the subject matter of the case; (3) the proposed intervenor's ability to protect that interest may be impaired in the absence of intervention; and (4) the parties already before the court may not adequately represent the proposed intervenor's interest."[1]

A. The motion is timely if no substantial delay results.

The Sixth Circuit considers five factors when determining the timeliness of a motion to intervene. They are "(1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenors knew or should have known of their interest in the case; (4) the prejudice to the original parties due to the proposed intervener's failure to promptly intervene after they knew or reasonably should have known of their interest in the case; and (5) the existence of unusual circumstances militating against or in favor of intervention."[2]

The City of Mt. Pleasant and County of Isabella file their motion after the current parties have filed their expert reports, but before any dispositions have been taken. If the City and the County do not present experts of their own, then there will be no delay.

B. The City of Mt. Pleasant and Isabella County have a substantial legal interest in the subject matter of the case.

Parts of the City of Mt. Pleasant and Isabella County are located within the five townships and two half-townships that the plaintiffs claim are Indian Country. This means that the issues raised by plaintiffs will affect how the proposed intervenors will exercise their taxing and other jurisdiction. Both the City and the County have put forward their substantial legal interests in the matter in their briefs.

[1] *United States v Michigan*, 424 F3d 436, 443 (CA6 2005).
[2] *Stupak-Thrall v Glickman*, 226 F3d 467, 473 (CA6 2000).

C. The City of Mt. Pleasant's and Isabella County's ability to protect its interest will be impaired as a practical matter.

Any decision in this case will affect the City of Mt. Pleasant and Isabella County's ability to bring suit in the future regarding their taxing and other interests.

D. The City of Mt. Pleasant and Isabella County must show that the State cannot adequately represent their interest.

Proposed intervenors face only a "minimal burden" in showing that they are inadequately represented by a party to a suit.[3] They need show only "that there is a potential for inadequate representation."[4] "Nevertheless, applicants for intervention must overcome the presumption of adequate representation that arises when they share the same ultimate objective as a party to the suit."[5] Defendants leaves the City of Mt. Pleasant and Isabella County to their proofs on this issue, but note that they have vigorously defended this case through the hiring of numerous experts and intend to continue to vigorously defend the case.

II. Permissive Intervention is appropriate.

Rule 24 (b) states that "[upon timely application anyone may be permitted to intervene in an action: . . . (2) when an applicant's claim or defense and the main action have a question or law or fact in common" and when intervention will not "unduly delay or prejudice the adjudication of the rights of the original parties."[6] The sixth circuit has ruled that "a proposed intervenor must establish that the motion for intervention is timely and alleges at least one common question of law or fact."[7] Here is the application is timely if conditioned to ensure that substantial delay does not occur. There are common questions of law and fact between the City

[3] *United States v Michigan*, 424 F.3d at 443.
[4] *Id., following, Grutter,* 188 F3d at 400.
[5] *United States v Michigan,* 424 F3d at 443-444.
[6] *Fed R Civ Pro* 24(b).
[7] *United States v Michigan,* 424 F3d at 445.

of Mt. Pleasant and Isabella County and the existing case. The City and Isabella County seek, like the other parties, to have the Court determine the extent of the Isabella Reservation.

CONCLUSION

The defendants do not oppose the intervention of the City of Mt. Pleasant and Isabella County so long as their intervention does not substantially disrupt the litigation schedule or prejudice the parties

Respectfully submitted,

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Dated: September 28, 2007
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PROOF OF SERVICE

I hereby certify that on September 28, 2007, I directed my secretary, Nancy E. Hart, to electronically file the foregoing 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.

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