



## The Grand Traverse Band of Ottawa and Chippewa Indians

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March 19, 2008

Hon. Michael D. Bishop  
Senate Majority Leader  
P.O. Box 30036  
Lansing, MI 48909-7536

Dear Senator Bishop:

By motion approved by the Tribal Council today, I have been directed to notify the Senate of this Tribe's objection to Senate Bill 860. Apparently it has not occurred to the Michigan legislature that this Tribe's rights reserved under the March 28, 1836 Treaty of Washington (7 Stat. 491) would be infringed by the water withdrawal scheme sanctioned by the proposed legislation. The State of Michigan is a party to the *United States, et al. v. Michigan, et al.* litigation pending in the United States District Court for the Western District of Michigan (File No. 2:73-CV-26). On November 2, 2007 a Consent Decree was filed (docket number 1799) in this case that confirms this Tribe's Treaty-reserved right to fish in inland rivers and streams within the 1836 cession area. This fishing right is a property right protected by the United States Constitution. *Grand Traverse Band of Ottawa and Chippewa Indians v. Director, Michigan Dep't of Natural Resources*, 971 F. Supp. 282, 288-91 (W.D. Mich. 1995), *aff'd*, 141 F.3d 635, 638-41 (6th Cir. 1998), *cert. denied*, 454 U.S. 1124 (1998).

Our understanding is that the legislation as now structured would allow water withdrawal from rivers and streams based on percentage reductions of "thriving fish populations." Any such reductions would amount to an unconstitutional taking of the Tribe's property right in fish resources of rivers and streams. Additionally, if enacted, this legislation also would be a fundamental breach of the agreement embodied within the Consent Decree, and therefore would enable the 1836 Treaty Tribes to reconsider concessions regarding commercial harvests and netting of inland lakes and streams.

Although we support legislation approving the Great Lakes Compact, we urge the Senate to approve the Compact in stand-alone legislation without being linked to the water-withdrawal legislation.

Sincerely,

Robert Kewaygoshkum  
Tribal Chairman





Everything Michigan

## Tribe says water legislation would violate its fishing rights

3/25/2008, 7:51 a.m. ET

By JOHN FLESHER  
The Associated Press

TRAVERSE CITY, Mich. (AP) — An American Indian tribe says bills pending in the Legislature to regulate high-volume water withdrawals would violate its rights by reducing fish populations in some rivers and streams.

Officials with other northern Michigan tribes also are raising concerns about the measures, pending in the House and Senate. The two versions are similar, but have differences that sponsors are trying to work out before floor votes are taken.

The bills would regulate withdrawals of more than 200,000 gallons per day from rivers and streams — or from underground aquifers — for commercial uses such as farming and manufacturing.

Lawmakers are considering them along with a related proposal to ratify an interstate compact designed to prevent Great Lakes water from being shipped or piped to other regions.

Supporters say the bills would help make sure Michigan's waters are used responsibly. But critics say their protections don't go far enough.

In a letter sent recently to legislative leaders, the Grand Traverse Band of Ottawa and Chippewa Indians said both bills were flawed because they would let businesses remove enough water from streams to diminish populations of fish such as trout by reducing stream flow or raising temperatures.

"Any such reductions would amount to an unconstitutional taking of the tribe's property right in fish resources of rivers and streams," said the letter, signed by Tribal Chairman Robert Kewaygoshkum.

Patricia Birkholz, chairwoman of the Senate's Natural Resources and Environmental Affairs Committee and a sponsor of the Senate bills, said the tribe was raising 11th-hour objections after keeping a low profile during months of discussions by legislative panels seeking a compromise on the water withdrawal issue.

"I find it rather puzzling, to say the least," Birkholz, a Saugatuck Republican, said Monday.

Last fall, the Grand Traverse Band and four other tribes signed an agreement with the state recognizing their members' right under an 1836 treaty to hunt and fish on public lands in parts of western and northern Michigan.

Under the deal, the tribes agreed to hunt and fish in those areas only for subsistence purposes — not for profit.

But the Grand Traverse Band said allowing water withdrawals that reduce fish numbers would be a "fundamental breach" of the agreement, which settled a 4-year-old lawsuit.

That's because it would allow businesses to reduce the value of the fishing resource while tribes are prohibited from commercial harvesting of those fish, said Bill Rastetter, attorney for the Grand Traverse Band.

"If you're going to authorize legislation to take away our property right, we have the ability to go into court and ask that the (2007 agreement) be set aside, because the rules have changed," Rastetter said.



He said the tribe had not decided whether to mount a legal challenge if the bills are enacted. In the meantime, it will propose changes for lawmakers to consider, he said.

Frank Ettawageshik, chairman of the Little Traverse Bands of Odawa Indians, said he feared the bills would undo some of the protections of fishing resources built into the agreement last year.

"It will do us no good to protect a treaty right to fish in the waters if the waters themselves have been damaged to the point that they're not fishable," Ettawageshik said.

Reducing stream flow enough to affect fish "isn't just an attack on the resources; it's an attack on our culture," said Jimmie Mitchell, natural resources director for the Little River Band of Ottawa Indians.

The House and Senate bills are based on a mechanism devised by a scientific panel to shield waterways from excessive withdrawals, Birkholz said.

While it acknowledges that small percentages of fish might die in some cases, the mechanism would protect most of them and uses their health as the primary indicator of how well the ecosystem is protected, she said.

The size of allowable fish reductions is among issues still to be worked out between House and Senate negotiators. The Senate bill as presently written would allow reductions of "thriving" fish populations such as trout by up to 5 percent in a cold-water stream. The House measure proposes no more than a 1 percent decrease.

Birkholz said fish protections in the bills are even stronger than those recommended by the scientific advisory group.

The tribes, she said, "should applaud us for wanting to preserve their fishing heritage as well as the fishing heritage of everyone in this state."

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