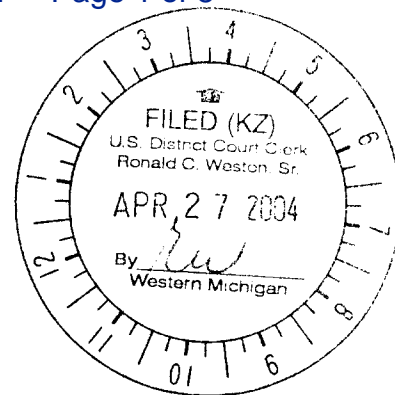


UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION



UNITED STATES OF AMERICA,
Plaintiff,

and

BAY MILLS INDIAN COMMUNITY,
SAULT STE. MARIE TRIBE OF
CHIPPEWA INDIANS, GRAND TRAVERSE BAND
OF OTTAWA AND CHIPPEWA INDIANS, LITTLE
RIVER BAND OF OTTAWA INDIANS, AND
LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS

Plaintiff-Intervenors/Counter-Defendants

v.

STATE OF MICHIGAN, et.al.

Defendants/Counterclaimants.

File No. 2:73 CV 26

Hon. Richard A. Enslen
U.S. District Judge
Hon. Ellen S. Carmody
U.S. Magistrate Judge

UNITED STATES'
SUPPLEMENTAL
COMPLAINT

UNITED STATES' SUPPLEMENTAL COMPLAINT

Pursuant to Fed. R. Civ. P. 15(d), Plaintiff, United States of America, supplements its complaint against the Defendants, leave having been granted by this Court. Since the filing of the original complaint on April 9, 1973, as amended on June 6, 1976, the following material events, *inter alia*, have occurred:

1. The Assistant Secretary-Indian Affairs, Department of the Interior, acknowledged the Grand Traverse Band of Ottawa and Chippewa Indians ("Grand Traverse") as an existing Indian tribe on March 25, 1980. 45 Fed. Reg. 19321 (Mar. 25, 1980). Grand Traverse obtained federal recognition on May 27, 1980, Id., and is recognized as a political

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successor to the signatories of the 1836 Treaty of Washington, 7 Stat. 491. Grand Traverse Band of Ottawa and Chippewa Indians v. Director, Michigan Department of Natural Resources, 141 F.3d 635, 637 (6th Cir. 1998).

- a. As a federally recognized tribe, Grand Traverse exercises governmental powers over its members, including the authorization and regulation of the exercise of treaty hunting, fishing, and gathering rights.
 - b. On behalf of itself and its member, Grand Traverse filed a Complaint in Intervention in this case on October 26, 1979.
2. Federal recognition of the Little River Band of Ottawa Indians ("Little River") was reaffirmed by Congress on September 21, 1994, 108 Stat. 2156, and Little River is recognized as a political successor to the signatories of the 1836 Treaty. 25 U.S.C. §1300k(1).
 - a. As a federally recognized tribe, Little River exercises governmental powers over its members, including the authorization and regulation of the exercise of treaty hunting, fishing, and gathering rights.
 - b. On behalf of itself and its members, Little River filed a Motion to Intervene and its Complaint for declaratory and injunctive relief on October 9, 1998. The Court granted the motion on October 15, 1998
3. Federal recognition of the Little Traverse Bay Bands of Odawa Indians ("Little Traverse") was reaffirmed by Congress on September 21, 1994, 108 Stat. 2156, and Little Traverse is recognized as a political successor to the signatories of the 1836 Treaty. 25 U.S.C. §1300k(1).

- a. As a federally recognized tribe, Little Traverse exercises governmental powers over its members, including the authorization and regulation of the exercise of treaty hunting, fishing, and gathering rights.
 - b. On behalf of itself and its members, Little Traverse filed a Complaint in Intervention on or about June 4, 1999.
4. By January 1997, the Plaintiff-Intervenor Tribes had instituted tribal codes and regulations for their members exercising treaty-protected hunting, fishing, trapping, and gathering rights on inland lands and waters within the area ceded by the 1836 Treaty that are not required for settlement within the meaning of the Treaty.
5. In 1991, upon the request of Plaintiff-Intervenor Bay Mills Indian Community ("Bay Mills"), the United States Fish and Wildlife Service ("USFWS") promulgated migratory bird hunting regulations for the area ceded by the 1836 Treaty. 56 Fed. Reg. 49626 (Sept. 30, 1991). The USFWS premised the new regulations upon its recognition of Bay Mills' authority to regulate tribal member migratory bird hunting in the ceded area. In 1995, the USFWS regulations were amended to include Grand Traverse, 60 Fed. Reg. 50706 (Sept. 29, 1995), and in 2000, both Little River and Little Traverse were included in the USFWS regulations, 65 Fed. Reg. 53190 (Sept. 1, 2000). These regulations have been renewed annually, most recently in August, 2003. 68 Fed. Reg. 51919 (Aug. 29, 2003).
6. In 1999, the United States Forest Service entered into a Memorandum of Understanding Regarding Tribal - USDA-Forest Service Relations on National Forest Lands within the Territories Ceded in Treaties of 1836, 1837, and 1842 ("MOU") with the Tribe members of the Great Lakes Indian Fish and Wildlife Commission. Bay Mills is a member of the

Commission and a signatory to the MOU. The MOU recognizes, among other things, 1836 Treaty-based gathering rights on National Forest Lands within the area ceded by the 1836 Treaty.

7. The United States alleges that the “right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement” has not been extinguished on inland lands and waters within the area ceded by the 1836 Treaty that are not required for settlement within the meaning of the Treaty.
8. Defendants increasingly have interfered with Plaintiff-Intervenor Tribes’ treaty protected rights related to inland hunting and fishing. Specifically, defendants have been, since at least 1997 and continuing to this day, interfering with the rights of all Plaintiff-Intervenor Tribes to fish, hunt, trap, and gather on inland lands and waters within the area ceded by the Treaty that are not required for settlement, by enforcing and/or threatening to enforce the natural resource laws and regulations of the State of Michigan against the members of the Tribes. Due to threats of arrest and prosecution, members of the Plaintiff-Intervenor Tribes are not able to fully exercise their treaty-protected rights as mentioned above, without risking prosecution, fines or other action by the Defendants.
9. On information and belief, the United States alleges that the above-mentioned acts of the Defendants in the enforcement or threatened enforcement of its natural resource laws and regulations against members of the Plaintiff-Intervenor Tribes is a result of Defendants’ erroneous belief that the rights reserved in the 1836 Treaty have been extinguished, except on federal lands that have never passed out of federal control and on which the exercise of those rights is not inconsistent with the purpose of federal ownership.

10. The United States further alleges that the Defendants and their officers and agents, acting under color of State law, lack jurisdiction to enforce any State statute or regulation on or with respect to ceded lands not required for settlement in such a manner as to prevent the Plaintiff-Intervenor Tribes and their members from exercising treaty protected rights, except to the extent permitted by federal law.

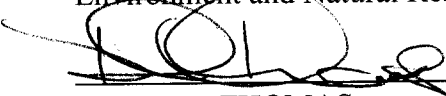
WHEREFORE, the Plaintiff prays, in addition to the relief granted on its original complaint, as amended, for judgment as follows:

1. A declaratory judgment, pursuant to 28 U.S.C. §§ 2201-02, that the Plaintiff-Intervenor Tribes continue to have treaty-protected rights to hunt, fish, trap and gather on inland lands and waters within the area ceded by the 1836 Treaty that are not required for settlement within the meaning of the Treaty.
2. Retention of jurisdiction by this Court for the purpose of enforcing its judgment and providing further necessary or proper relief in accordance with 28 U.S.C. § 2202 or other applicable law.

Respectfully submitted,

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DATED: April 16, 2004



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CERTIFICATE OF SERVICE

I hereby certify that on or before this 16th day of April, 2004, a true and correct copy of the foregoing United States' Motion for Leave to File Supplemental Complaint, Supplemental Complaint, Stipulation in Response to Motion for Leave to File Supplemental Complaint, and Proposed Order On Motion for Leave to File Supplemental Complaint were served by United States Postal Service first class, postage pre-paid mail to the following:

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Dated: April 16, 2004


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