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 OF AMERICA,

Plaintiff-Intervenor,

v

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

Defendants.

and

CITY OF MT. PLEASANT and COUNTY OF ISABELLA,

Defendant-Intervenors.
_____/

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

DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Jennifer Granholm, Mike Cox, Robert J. Kleine, the State of Michigan, City of Mt. Pleasant, and County of Isabella (Defendants) move for partial summary judgment against the

United States and Saginaw Chippewa Indian Tribe (Tribe) pursuant to Fed. R. Civ. P. 56(c) for the following reasons:

1. Plaintiffs seek a declaratory judgment that all of the land within the boundaries of six townships in Isabella County, designated in the 1855 Treaty with the Chippewa (1855 Saginaw Treaty) [1] and the 1864 Treaty with the Chippewa Indians (1864 Treaty), are a reservation and are therefore Indian country. [2]
2. Defendants maintain that only land held in trust by the United States for the benefit of the Tribe is Indian country, because two treaties set aside land only for the allotment of parcels to individual Saginaw Chippewa Indians. Assuming for argument's sake only that the alleged Isabella reservation exists, it does not contain the sold lands or the other lands disposed of prior to the land being withdrawn for the purpose of individual Tribal members selecting allotments.
3. In 1953 and 1954, the Indian Claims Commission held that the Tribe received no interest in any tracts of land within the six townships that were previously sold or otherwise disposed of by the United States prior to the withdrawal of the six townships from the public domain, including land granted to the State of Michigan under the 1850 Swamp Lands Act under which the State of Michigan received patents for lands designated as swamp lands by a surveyor.[3] The Commission's decisions are binding on the Tribe and the United States. Therefore, both plaintiffs in this case are precluded by collateral estoppel from

[1] *Treaty with the Chippewa of 1855*, 11 Stat. 633 (August 5, 1955).
[2] *Treaty with the Chippewa Indians of 1864*, 14 Stat. 657 (October 18, 1864).
[3] *Saginaw Chippewa Indian Tribe v United States,* Docket No. 13-H, 2 Ind. Cl. Comm. 380, 386 (1953)(attachment 1); *Saginaw Chippewa Indian Tribe v United States,* Docket No. 13-H, 3 Ind. Cl. Comm. 1 (1954)(attachment 2).

relitigating the interest the Tribe received in lands disposed of before May 14, 1855, when the land was withdrawn from sale in anticipation of the 1855 Saginaw Treaty.

4. Additionally, the clear language of the 1855 Saginaw Treaty excludes the sold lands from the alleged reservation. Finally, if the clear language of the 1855 Saginaw Treaty does not exclude the sold lands from the alleged reservation under the 1855 Saginaw Treaty, then evidence of the Saginaw Chippewas' understanding of the 1855 Saginaw Treaty demonstrates that the sold and otherwise disposed of lands are not part of the alleged Isabella reservation.
5. Finally, the Tribe also asserts a 42 U.S.C. § 1983 claim. The Tribe is not a "person" under the claim because it asserts only sovereign rights. Therefore, the Tribe cannot bring a 42 U.S.C. § 1983 claim.
6. Because the Tribe's interest in these lands presents no genuine issue of material fact, Defendants respectfully request that partial summary judgment be granted under Fed. R. Civ. P. 56 declaring that the lands sold or disposed of by the United States are not part of the alleged Isabella reservation and dismissing the Tribe's 42 U.S.C. § 1983 count.

Respectfully submitted,

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Dated: March 5, 2010

PROOF OF SERVICE

On March 5, 2010, I directed my secretary, Robbin 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' MOTION FOR PARTIAL SUMMARY JUDGMENT

/s/ Todd B. Adams
Todd B. Adams

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lf/Saginaw Chippewa(boundary)/def motion support partial judgment.

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 OF AMERICA,

Plaintiff-Intervenor,

v

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

Defendants.

and

CITY OF MT. PLEASANT and COUNTY OF ISABELLA,

Defendant-Intervenors.
_____/

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

DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT

CONCISE STATEMENT OF ISSUES PRESENTED

1. Summary Judgment under Federal Rule of Civil Procedure 56(c) is appropriate "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." On the issue of whether the alleged Isabella reservation contains lands sold at the time of withdrawal of the land from the public domain, there is no genuine issue of material fact. Assuming for argument's sake only that there is a reservation, are the Defendants entitled to partial summary judgment as a matter of law on whether the alleged Isabella reservation contains land already sold or disposed of at the time of withdrawal of the six townships from the public domain?

2. Collateral Estoppel prevents parties from relitigating the same issues decided in another litigation. The Indian Claims Commission decided that the Saginaw Chippewa Indian Tribe had no interest in lands sold or disposed of by the United States prior to the withdrawal of the six townships from the public domain. Are the Saginaw Chippewa Indian Tribe and the United States collaterally estopped from relitigating the Indian Claims Commission's determination of the interests that the Tribe received under the 1855 and 1864 Treaties?

3. Interpretation of clear language in an American Indian Treaty controls over purported Indian understanding. Clear language of the 1855 Saginaw Treaty excludes sold public lands from the alleged Isabella reservation. Does the alleged Isabella reservation contain sold public lands?

4. American Indian understanding controls interpretation of treaties that are unclear. The Saginaw Chippewa understood any alleged reservation created under the 1855 Saginaw Treaty as containing only land not sold or disposed of by the United States prior to the withdrawal of the six townships from the public domain.

5. American Indian Tribes making claims about sovereignty are not considered "persons" under 42 U.S.C. § 1983. The Saginaw Chippewa Tribe is making claims about sovereignty in its complaint under 42 U.S.C. § 1983. Is the Saginaw Chippewa Tribe a "person" under 42 U.S.C. § 1983?

CONTROLLING OR MOST APPROPRIATE AUTHORITY FOR THE RELIEF SOUGHT

1. Standard that Defendants are entitled to partial summary judgment because there is no genuine issue of material fact and judgment is appropriate as a matter of law:

Fed. R. Civ. P. 56(c).

Celotex Corp. v Catrett 477 U.S. 317 (1986).

Anderson v Liberty Lobby, Inc., 477 U.S. 242 (1986).

Martin v Ohio Turnpike Comm'n, 968 F.2d 606 (6th Cir., 1992).

2. Standard on whether partial summary judgment should be granted to preclude the plaintiffs from relitigating the reservation status of lands disposed of by the United States before the 1855 Saginaw Treaty and lands patented to the State of Michigan under the 1850 Swamp Land Act, under the doctrine of collateral estoppel:

Hammer v INS, 853 F.3d 836, 840 (6th Cir., 1999).

Oglala Sioux Tribe v Homestake Mining Co. (Oglala II), 722 F.2d 1407, 1413-1414 (8th Cir., 1984).

United States v Dann, 470 U.S. 39 (1985).

United States v Pend Oreille Public Utility District No 1, 926 F.2d 1502 (9th Cir., 1991).

Western Shoshone Nat'l Council v Molini, 951 F2d 200 (9th Cir., 1991).

3. Standard on whether the clear language of the 1855 Saginaw Treaty limits the alleged Isabella reservation to "unsold public lands."

Choctaw Nation of Indians v United States, 318 U.S. 423 (1999).

DeCoteau v District County Court for Tenth Judicial Dist., 420 U.S. 425 (1975).

4. Standard on whether American Indian understanding of the 1855 Saginaw Treaty and 1864 Treaty excludes sold or disposed of lands from the alleged Isabella reservation.

Oregon Department of Fish and Wildlife v Klamath Indian Tribe, 473 U.S. 753 (1985).

5. Standard on whether the Saginaw Chippewa Indian Tribe can sue under 42 U.S.C. § 1983 is whether they are asserting any rights other than sovereign rights.

Inyo County v Paiute-Shoshone Indians, 538 U.S. 701 (2003).

Keweenaw Bay Indian Community v Rising, 569 F.3d 589 (6th Cir. 2009).

INTRODUCTION

Plaintiffs seek a declaratory judgment that all of the land within the boundaries of six townships in Isabella County, designated in the treaties of 1855 and 1864 between the Saginaw Chippewa Indian Tribe of Michigan (Tribe) and the United States is Indian country under federal law, are a reservation and are, therefore, Indian country. The two treaties set aside land only for the allotment of parcels to individual Saginaw Chippewa Indians. Defendants further maintain that only land held in trust by the United States for the benefit of the Tribe is Indian country. Assuming for argument's sake only that the alleged Isabella reservation exists, it does not contain the sold lands or the other lands disposed of prior to the land being withdrawn for the purpose of individual Tribal members selecting allotments.

In 1953 and 1954, the Indian Claims Commission held that the Tribe received no interest in any tracts of land within the six townships that were previously sold or otherwise disposed of by the United States prior to the withdrawal of the six townships from the public domain, including land granted to the State of Michigan by the 1850 Swamp Land Act under which the State of Michigan received patents for lands designated as swamp lands by a surveyor.[1] The Commission's decisions are binding on the Tribe and the United States. Therefore, both plaintiffs in this case are precluded by collateral estoppel from relitigating the interest the Tribe received in lands disposed of before May 14, 1855, when the unsold lands within the six townships were withdrawn from sale in anticipation of the 1855 Saginaw Treaty.

Additionally, the clear language of the 1855 Saginaw Treaty excludes the sold lands from the alleged reservation. Finally, if the clear language of the 1855 Saginaw Treaty does not

[1] *Saginaw Chippewa Indian Tribe v United States,* Docket No 13-H, 2 Ind. Cl. Comm. 380, 386 (1953)(attachment 1); *Saginaw Chippewa Indian Tribe v United States,* Docket No 13-H, 3 Ind. Cl. Comm. 1 (1954)(attachment 2).

exclude the sold lands from the reservation allegedly created by the 1855 Saginaw Treaty, then evidence of the Saginaw Chippewas' understanding of the 1855 Saginaw Treaty demonstrates that the sold and otherwise disposed of lands are not part of the alleged Isabella reservation.

Because the Tribe's interest in these lands presents no genuine issue of material fact, Defendants respectfully request that partial summary judgment be granted under Fed. R. Civ. P. 56 declaring that the lands sold or disposed of by the United States are not part of the alleged Isabella reservation.

Finally, the Tribe also asserts a 42 U.S.C. § 1983 claim. The Tribe is not a "person" under the claim because it asserts only sovereign rights. Therefore, the Tribe cannot bring a 42 U.S.C. § 1983 claim, and the claim should be dismissed.

STATEMENT OF FACTS

Two treaties govern the facts in this case. The 1855 Treaty with the Chippewa (1855 Saginaw Treaty) provides in Article 1 that:

> [t]he United States will withdraw from sale, for the benefit of said Indians, as herein provided, all the unsold public lands within the State of Michigan embraced in the following description, to wit: *First*. Six adjoining townships of land in the county of Isabella, to be selected by said Indians within three months from this date and notice to be given to their agent. *Second*. A tract of land in one body, equal in extent to two townships, on the north side of Saginaw Bay, to be selected by them, and notice given as above provided.[2]

The 1864 Treaty with the Chippewa Indians (1864 Treaty) provides in Article I that:

> The said Indians also agree to relinquish to the United States all claim to any right they may possess to locate lands in lieu of lands sold or disposed of by the United States upon their reservation at Isabella, and also the right to purchase the unselected lands in said reservation, as provided for in the first article of said treaty.

In Article II, the 1864 Treaty provides that:

> [t]he United States hereby agree to set apart for the exclusive use, ownership, and occupancy of the said Chippewas of Saginaw, Swan Creek, and Black River, all of the unsold lands within the six townships in Isabella county, reserved to said Indians by the treaty of August 2d, 1855 aforesaid . . . .[3]

The Tribe has filed a complaint seeking a "declaratory judgment pursuant to 28 U.S.C. § 2201 and § 2202 and other applicable law, declaring that the six township historic Isabella Reservation, as established by Executive Order and Treaty in 1855 and affirmed by Treaty in 1864, exists today as an Indian reservation and is Indian country pursuant to federal law."[4] The

[2] *Treaty with the Chippewa of 1855*, 11 Stat. 633 (August 5, 1955) (emphasis in original).
[3] *Treaty with the Chippewa Indians of 1864*, 14 Stat. 657 (October 18, 1864).
[4] Saginaw Chippewa Tribe Amended Complaint, para 44, Dkt# 17.

Tribe's claim for a declaration of Indian country is based on its claims of tribal sovereignty[5] and treaty rights.[6]

The Tribe and the United States were adversarial parties in litigation before the Indian Claims Commission (Commission) in 1953 and 1954. In Docket No. 13-H, the Commission determined the extent of the interests that the Saginaw Chippewas received under the 1855 and 1864 Saginaw Treaties and held they received no interest in lands disposed of by the United States before the 1855 Saginaw Treaty. The Commission also held that the Indians at Saginaw Bay received only the unsold lands at Isabella as compensation for their relinquishment of their lands surrounding the Bay, that the United States owed the Tribe no compensation for them,[7] and that both the Tribe and the United States clearly understood the status of Swamp Land Act lands.[8] The Swamp Land Act of 1850,[9] "made a grant in praesenti; in other words, the title then passed to all lands which at that date were swamp lands, and the only matters thereafter to be considered were those of identification."[10]

In its prayer for relief, the Tribe asks for an order pursuant to 42 U.S.C. § 1983 permanently enjoining the defendants from asserting criminal and civil jurisdiction or taking any other actions against "the Tribe or Tribal members within the historic Isabella Reservation in a manner that federal law would not allow in Indian country."[11]

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[5] Saginaw Chippewa Tribe Amended Complaint, para 43, Dkt# 17.
[6] Saginaw Chippewa Tribe Amended Complaint, para 39, Dkt# 17.
[7] *Saginaw Chippewa Indian Tribe v United States*, Docket No 13-H, 3 Ind. Cl. Comm. 3, 9 (1954)(attachment 2).
[8] *Saginaw Chippewa Indian Tribe v United States*, Docket No 13-H, 2 Ind. Cl. Comm. 380, 402 (1953)(attachment 1).
[9] Act of Congress, September 28, 1850, ch. 84, 9 Stat. 519.
[10] *Michigan Land & Lumber Co. v Rust*, 168 U.S. 589, 591 (1897).
[11] Saginaw Chippewa Tribe Amended Complaint, para 45, Dkt# 17.

The United States intervened on November 1, 2008. In its complaint, the United States seeks a declaratory judgment that all lands within the boundaries of the Isabella reservation are Indian country under 25 U.S.C. § 1151(a).[12]

I. Summary Judgment under Federal Rule of Civil Procedure 56(c) is appropriate "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." On the issue of whether the alleged Isabella reservation contains lands sold at the time of withdrawal of the unsold land from the public domain, there is no genuine issue of material fact. Defendants are entitled to partial summary judgment as a matter of law on whether the alleged Isabella reservation contains land already sold or disposed of at the time of withdrawal of the six townships from the public domain.

Plaintiffs Tribe and United States argue that the alleged Isabella Reservation contains all the lands in six designated townships. Defendants deny that the 1855 Saginaw Treaty or the 1864 Treaty created a reservation for the Tribe,[13] but, assuming for argument's sake only that they do, the alleged reservation does not contain the sold land and other lands disposed of prior to the time when the land was withdrawn from the public domain for the alleged reservation.

Summary judgment under Federal Rule of Civil Procedure 56(c) is appropriate "if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law."[14] A factual dispute will defeat summary judgment if it is "genuine"; that is, if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party."[15] The issue must also be material; that is, it must involve facts that might affect the outcome of the suit

[12] United States Complaint, para 21, Dkt# 29.
[13] The two treaties set aside land only for the allotment of land to individual Saginaw Chippewa Indians.
[14] *Celotex Corp v Catrett*, 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56(c).
[15] *Anderson v Liberty Lobby, Inc*, 477 U.S. 242, 248 (1986).

under the governing law."[16] "When determining whether there is a genuine issue of material fact, a court must view the evidence in the light most favorable to the non-moving party."[17] Once the moving party has satisfied the "initial responsibility of informing the district court of the basis for its motion,"[18] the burden falls on the party that will bear the burden of proof at trial to "make a showing sufficient to establish the existence of an element essential to that party's case."[19] If the party that will bear the burden of proof at trial cannot establish a genuine issue of material fact on the issue in dispute, summary judgment will be granted under Rule 56(c).

As discussed below, there is no genuine issue of material fact about whether the alleged Isabella Reservation contains the sold lands within the six townships. Partial summary judgment is appropriate as a matter of law.

II. Collateral estoppel prevents parties from relitigating the same issues decided in another litigation. The Indian Claims Commission decided the issue that the Tribe had no interest in the lands sold or disposed of by the United States prior to the withdrawal of the six townships from the public domain. The Tribe and the United States are collaterally estopped from relitigating the Indian Claims Commission's determination of the interests that the Tribe received under the 1855 and 1864 Treaties.

The affirmative defense of collateral estoppel applies when a party attempts to relitigate an issue already decided in a previous action. "Under the doctrine of collateral estoppel, also referred to as issue preclusion, 'once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different

[16] *Martin v Ohio Turnpike Comm'n*, 968 F.2d 606, 609 (6th Cir. 1992), citing *Anderson v Liberty Lobby, Inc*, 477 U.S., at 248.
[17] *Martin*, 968 F.2d, at 609, citing *Anderson v Liberty Lobby, Inc*, 477 U.S., at 255.
[18] *Celotex*, 477 U.S., at 322.
[19] *Celotex*, 477 U.S., at 323.

cause of action involving a party to the prior litigation.'"[20] The Sixth Circuit follows a four-part test for the application of collateral estoppel:

> 1) the precise issue raised in the present case must have been raised and actually litigated in the prior proceeding;
> 2) determination of the issue must have been necessary to the outcome of the prior proceeding;
> 3) the prior proceeding must have resulted in a final judgment on the merits; and
> 4) the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding.[21]

Collateral estoppel applies to Indian Claims Commission determinations. The Commission's determinations collaterally estop the United States and Tribe.

A. The precise issue was raised and actually litigated.

Collateral estoppel first requires that, "the precise issue raised in the present case must have been raised and actually litigated in the prior proceeding."[22] The Commission previously determined the extent of the interests that the Saginaw Chippewas received under the 1855 and 1864 Saginaw treaties and held they received no interest in lands disposed of by the United States before the 1855 Saginaw Treaty. In Docket No. 13-H, the first claim that the Commission addressed was the Tribe's argument that the number of acres that the United States withdrew from sale at Isabella for its benefit in the 1864 Saginaw Treaty was unconscionable consideration for their relinquishment of lands at Saginaw Bay.[23] In ruling that the Tribe received adequate compensation for its Saginaw Bay lands, the Commission made factual determinations on the issue of whether the United States owed the Tribe compensation for:

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[20] *Hammer v INS,* 195 F.3d 836, 840 (6th Cir, 1999) (citation omitted), *cert. den.,* 528 U.S. 1191 (2000).
[21] *United States v Cinemark USA, Inc.*, 348 F.3d 569, 583 (6th Cir, 2003) *cert. den.*, 542 U.S. 937 (2004).
[22] *United States v Cinemark USA*, 348 F.3d, at 583.
[23] *Saginaw Chippewa Indian Tribe v United States,* Docket No 13-H, 2 Ind. Cl. Comm. 380, 390-399 (1953)(attachment 1).

> Lands within the six townships described in the treaty of 1855, which had been sold by defendant prior to the treaty. It is difficult to find any basis for [compensation] because by the treaty of 1855, it was only the *unsold* public lands in the six townships that were withdrawn from sale for their benefit and, according to the evidence; they received 98,051.13 acres of them.[24]

Thus, the Commission defined the parameters of the interests that the Tribe received under both treaties, holding that, "what the Saginaw got for their relinquishment of the Saginaw reservation by the treaty of October 18, 1864, were: (a) 'the exclusive use, ownership, and occupancy of all of the unsold lands' in Isabella Reservation, (Article 2), including the 64,519.33 acres of unselected lands," among other things.[25] Similarly, in Docket No. 13-I, the Commission addressed the Tribe's claim that the consideration it received under the 1855 Saginaw Treaty for release of its claims against the government under the 1837 treaty was unconscionable. In determining that the 1855 treaty adequately compensated the Tribe, the Commission defined the parameters of the interests the 1855 and 1864 treaties gave the Tribe as, "individual allotments and patents to land aggregating more than 98,000 acres," as well as monetary compensation.[26] Approximately 40,188.87 acres of land[27] in the six townships at Isabella had been sold or otherwise by disposed of by the United States and therefore were not part of the Tribe's treaty interest.

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[24] *Saginaw Chippewa Indian Tribe v United States*, Docket No 13-H, 3 Ind. Cl. Comm. 1, 9 (1954)(attachment 2)(emphasis in original).
[25] *Saginaw Chippewa Indian Tribe v United States*, Docket No 13-H, 3 Ind. Cl. Comm. 1, at 2-3 (attachment 2)(at the time of the 1864 treaty, 64,519.33 acres of land remained unselected at Isabella out of the original 98,051.13 acres withdrawn under the 1855 treaty).
[26] *Saginaw Chippewa Indian Tribe v United States*, Docket No 13-I, 2 Ind. Cl. Comm. 404, 411 (1953)(attachment 3).
[27] The entire six-township treaty area consists of an estimated 138,240 acres, at 640 acres per section multiplied by 36 sections per township. The estimate of 40,188.87 acres sold or otherwise disposed of is the difference between the total 138,240 acres, and the 98,051.13 acres that the Indian Claims Commission determined that the Tribe received an interest in.

B. Issue was necessary to the outcome of the prior proceeding.

The second element of collateral estoppel requires that "determination of the issue must have been necessary to the outcome of the prior proceeding."[28] In Docket No. 13-H, the Commission defined the parameters of the interests that the Tribe received under the 1855 and 1864 treaties so it could determine whether the consideration that the United States gave the Tribe in return for their lands at Saginaw Bay was unconscionable.[29] The Commission could not have made a decision on whether the Saginaw Chippewa were adequately compensated for their lands without determining exactly what consideration they received in return. The Commission's determination of the interest that the Tribe received under the treaties was therefore necessary to the outcome of the Commission's decision.

C. Prior proceeding resulted in a final judgment on the merits.

The third element of collateral estoppel requires that "the prior proceeding must have resulted in a final judgment on the merits."[30] Commission decisions are final judgments because, "'When the report of the Commission determining any claimant to be entitled to recover has been filed with Congress, such report shall have the effect of a final judgment of the Court of Claims. . . .'"[31] Court of Claims decisions are binding on all parties to the action, in "any claim, suit, or demand against the United States arising out of the matters involved in the case or controversy."[32] Docket Nos. 13-H and 13-I were final judgments on the merits.

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[28] *United States v Cinemark USA*, 348 F.3d, at 583.
[29] *Saginaw Chippewa Indian Tribe v United States*, Docket No 13-H, 3 Ind. Cl. Comm., at 3 (attachment 2).
[30] *United States v Cinemark USA*, 348 F.3d, at 583.
[31] *United States v Dann*, 470 U.S. 39, 45 (1985), *quoting* 25 U.S.C. § 70u(a) (1976 ed)(repealed 1978).
[32] 28 U.S.C. § 2519.

Case law confirms that Commission decisions are judgments on the merits.[33] The United States Supreme Court held in *United States v Dann* that the "chief purpose of the [Act was] to dispose of the Indian claims problem with finality."[34]

The two Circuits of the United States Court of Appeals to have considered the issue have ruled, therefore, that the Commission decisions have preclusive effect. The Eighth Circuit stated:

> Under the doctrine of collateral estoppel, the 1974 Indian Claims Commission decision . . . as affirmed by the Court of Claims . . . and the Supreme Court . . . bars the Oglala Sioux from relitigating whether the Act of 1877 extinguished their right to the Black Hills.[35]

In *Western Shoshone Nat'l Council v Molini*,[36] the Ninth Circuit held that the statutory bar in Section 70u(a) of the Indian Claims Commission Act[37] precluded tribal litigants from relitigating their ICCA lawsuit for hunting and fishing rights against the state of Nevada as well as the United States.[38] The *Western Shoshone* Court stated, "We did not suggest that the Commission's determination of title applied only in actions against the United States."[39]

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[33] *Oglala Sioux Tribe v Homestake Mining Co (Oglala II)*, 722 F.2d 1407, 1413-1414 (8th Cir. 1984); *cited with approval in Navajo Tribe v New Mexico*, 809 F.2d 1455, 1464 (10th Cir. 1987). See also *Havasupai Tribe v United States*, 752 F. Supp 1471, 1481 (D-Ariz. 1990), *aff'd sub nom, Havasupai Tribe v Robertson*, 943 F.2d 32(9th Cir. 1991), *cert. den. sub nom, Havasupai Tribe v United States*, 503 U.S. 959 (1992) (stating that Indian Claims Commission judgments can have preclusive effects).

[34] *Dann*, 470 U.S., at 45, quoting H.R. Rep. No. 1466, 79th Cong., 1st Sess., 10 (1945).

[35] *Oglala II*, 722 F.2d at 1413-1414 (8th Cir. 1984) (citations omitted).

[36] *Western Shoshone Nat'l Council v Molini*, 951 F.2d 200 (9th Cir., 1991), *cert. den.*, 506 U.S. 822 (1992).

[37] 25 U.S.C.S. § 70u (1976 ed.)(repealed 1978).

[38] *Western Shoshone Nat'l Council v Molini*, 951 F.2d 200, 202 (9th Cir., 1991).

[39] *Western Shoshone*, 951 F.2d, at 202 (9th Cir., 1991), citing *United States v Dann (Dann III)*, 873 F.2d 1189, 1195 (9th Cir., 1989). *See also, United States v Pend Oreille Pub. Util. Dist. No. 1*, 926 F.2d 1502, 1509 (9th Cir. 1991), *cert. den., Washington Dep't of Natural Resources v United States*, 502 U.S. 956 (1992) (holding an Indian Tribe precluded by an Indian Claims Commission ruling).

The Indian Claims Commission's decisions are final decisions on the merits.

D. Party to be estopped had full and fair opportunity to litigate the issue.

The fourth element of collateral estoppel requires that, "the party against whom estoppel is sought must have had a full and fair opportunity to litigate the issue in the prior proceeding."[40] The Supreme Court has expressly adopted this requirement in order to observe due process:

> The [appellate] court cited the general view of courts and commentators that "among the most critical guarantees of fairness in applying collateral estoppel is the guarantee that the party sought to be estopped had not only a full and fair opportunity but an adequate incentive to litigate 'to the hilt' the issues in question."[41]

The plaintiffs in this lawsuit, the Tribe and the United States, were adversaries in prior litigation before the Commission in 1953 and 1954. The record of Dockets No. 13-H and 13-I before the Commission shows that both the Saginaw Tribe and the United States vigorously litigated the issues, presented hundreds of exhibits, and engaged in an exhaustive investigation of the facts surrounding the lands at issue in the 1855 and 1864 Saginaw Treaties. There are no allegations on the record of inadequate due process in Dockets No. 13-H and 13-I before the Commission by the Tribe or the United States. The parties to be estopped had a full and fair opportunity to litigate the issue.

E. State Courts have held that individual Saginaw Chippewa are collaterally estopped from relitigating whether unsold lands were part of the Isabella Reservation.

In *Moses v Dept of Corrections,*[42] the Michigan Court of Appeals upheld state court jurisdiction over a member of the Tribe who committed a crime on a parcel of land within the

[40] *United States v Cinemark USA*, 348 F.3d, at 583.
[41] *Haring v Prosise,* 462 U.S. 306, 311 (1983); see, e.g., *Hammer,* 853 F.3d, at 842 (observation of due process satisfies the "full and fair opportunity" requirement of collateral estoppel).
[42] *Moses v Dept of Corrections,* 274 Mich. App. 481 (2007).

six-township treaty area that had been patented to the State of Michigan under the Swamp Lands Act. In holding that such lands are not Indian country, the Court relied on *Oglala II* and *Western Shoshone* to give preclusive effect to the Commission's findings of fact and allow actions against a tribal defendant by the State of Michigan.[43] The Court also relied on its previous ruling in *People v Bennett,* in which it examined the plain language of the 1864 Saginaw Treaty and concluded that the phrase "unsold lands" meant that lands sold before the date of that treaty were under state court jurisdiction.[44] In *Moses,* the Court opined that:

> Although following *Bennett* might cause the "checkerboard" of jurisdiction disapproved of in *Keweenaw Bay Indian Community* and *Seymour,* we find it unreasonable to treat land that was never intended to be part of the Isabella Indian Reservation as reservation land solely to achieve a well-defined boundary.[45]

F. The United States can be collaterally estopped defensively.

In *United States v Mendoza*,[46] the United States Supreme Court held that "nonmutual offensive collateral estoppel simply does not apply against the Government in such a way as to preclude relitigation of issues such as those involved in this case."[47] On the same day the Supreme Court issued *Mendoza*, it issued *United States v Stauffer Chemical Co.*,[48] in which it held that "the doctrine of mutual defensive collateral estoppel is applicable against the

[43] *Moses,* 274 Mich. App., at 502-504.
[44] *People v Bennett,* 195 Mich. App. 455, 458 (1992).
[45] *Moses,* 274 Mich. App., at 501 (citations omitted).
[46] *United States v Mendoza,* 464 U.S. 154 (1984).
[47] *United States v Mendoza,* 464 U.S., at 162. The Sixth Circuit has described the holding inaccurately as "the Supreme Court has held that non-mutual issue preclusion is generally not available against the United States." *Chambers v Ohio Dep't of Human Servs.*, 145 F.3d 793, 801, n. 14 (6th Cir. 1998).
[48] *United States v Stauffer Chemical Co.*, 464 U.S. 165 (1984).

Government."[49] This case involves a different issue: Whether the non-mutual defensive collateral estoppel[50] of a fact applies against the United States. It should.

Non-mutual defensive collateral should apply against the United States because the policy reasons for not applying non-mutual offensive collateral estoppel do not apply to non-mutual defensive collateral estoppel of a fact. It will not "substantially thwart the development of important questions of law by freezing the first final decision rendered on a particular legal issue."[51] The status of sold lands is a fact. The United States should not be allowed to argue different facts in different courts. Estopping the United States from relitigating the status of the sold lands will prevent contradictory court decisions.

Non-mutual defensive collateral estoppel should apply to the United States.

G. Conclusion.

The sold lands are not part of the Isabella reservation, and plaintiffs are precluded from relitigating the issue under the doctrine of collateral estoppel. There is no genuine issue of material fact about the Indian Claims Commission holdings. Summary judgment is, therefore, appropriate as a matter of law.

III. Interpretation of clear language in an American Indian Treaty controls over purported Indian understanding. Clear language of the 1855 Saginaw Treaty excludes sold public lands from the alleged Isabella reservation. The alleged Isabella reservation does not contain sold public lands.

Clear language in an American Indian Treaty controls interpretation of the Treaty. Article 1 of the 1855 Saginaw Treaty states that "The United States will withdraw from sale, for the benefit of said Indians, as herein provided, all the unsold public lands within the State of

[49] *United States v Stauffer Chemical Co.*, 464 U.S., at 169.
[50] "Defensive use of collateral estoppel occurs when a defendant seeks to prevent a plaintiff from relitigating an issue the plaintiff has previously litigated unsuccessfully in another action against the same or a different party." *United States v Mendoza*, 464 U.S., at 158, n. 4.
[51] *United States v Mendoza*, 464 U.S., at 160.

Michigan embraced in the following descriptions…." This clear language limits the alleged Isabella reservation to the "unsold public lands."

The United States Supreme Court has held that Indian treaties are to be interpreted according the Indian treaty canons of construction. First, Indian treaties are to be interpreted "to give effect to the terms as the Indians themselves would have understood them."[52] Second, "any ambiguities are to be resolved in their [the Indians'] favor.[53] Third, "Indian treaties are to be interpreted liberally in favor of the Indians."[54]

These canons of construction do not mean, however, that the clear language of a treaty can be ignored. In *Choctaw Nation of Indians v United States*,[55] the United States Supreme Court considered the meaning of a 1902 agreement with the Choctaw Nation regarding compensation for lands allotted to freedmen. In reversing the decision of the Court of Claims that liberally construed the agreement, the *Choctaw Nation* Court stated:

> Especially is this true in interpreting treaties and agreements with the Indians; they are to be construed, so far as possible, in the sense in which the Indians understood them, and "in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people." But even Indian treaties cannot be rewritten or expanded beyond their clear terms to remedy a claimed injustice or to achieve the asserted understanding of the parties.[56]

More recently, the United States Supreme Court has reaffirmed the principle that the Indian canons of construction do not have control over clear language in treaties or statutes. First, in *DeCoteau v District County Court for Tenth Judicial Dist.*,[57] the Supreme Court

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[52] *Minnesota v Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 196 (1999).
[53] *Minnesota*, 526 U.S., at 200.
[54] *Minnesota*, 526 U.S., at 200.
[55] *Choctaw Nation of Indians v United States*, 318 U.S. 423 (1999).
[56] *Choctaw Nation of Indians*, 318 U.S. at 432.
[57] *DeCoteau v District County Court for Tenth Judicial Dist.*, 420 U.S. 425 (1975).

considered an 1889 agreement and 1891 statute with two bands of the Sioux Nation regarding the extent of their reservation. The *DeCoteau* Court stated:

> With the benefit of hindsight, it may be argued that the tribe and the Government would have been better advised to have carved out a diminished reservation, instead of or in addition to the retained allotments. But we cannot rewrite the 1889 agreement and the 1891 statute. For the courts to reinstate the *entire* reservation, on the theory that retention of mere allotments was ill-advised, would carry us well beyond the rule by which legal ambiguities are resolved to the benefit of the Indians. We give this rule the broadest possible scope, but it remains at base a canon for construing the complex treaties, statutes, and contracts, which define the status of Indian tribes. A canon of construction is not a license to disregard clear expressions of tribal and congressional intent.[58]

In *South Carolina v Catawba Indian Tribe, Inc.*,[59] the Catawba Indian Tribe contended that South Carolina had failed to comply with a treaty.[60] Interpreting a statute, the *Catawba* Court stated that "[t]he canon of construction regarding the resolution of ambiguities in favor of Indians, however, does not permit reliance on ambiguities that do not exist; nor does it permit disregard of the clearly expressed intent of Congress."[61]

In 1998 in *South Dakota v Yankton Sioux Tribe*,[62] the United States Supreme Court considered whether Congress intended to diminish a reservation by an 1894 Act "ratify[ing] an agreement for the sale of surplus tribal lands."[63] Finding that Congress intended to diminish the reservation, the Court stated: "The principle according to which ambiguities are resolved to the benefit of Indian tribes is not, however, 'a license to disregard clear expressions of tribal and congressional intent.'"[64]

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[58] *DeCoteau*, 420 U.S. at 447 (citations omitted) (emphasis in original).
[59] *South Carolina v Catawba Indian Tribe, Inc.*, 476 U.S. 498 (1986).
[60] *Catawba Indian Tribe*, 476 U.S. at 501.
[61] *Catawba Indian Tribe*, 476 U.S. at 506.
[62] *South Dakota v Yankton Sioux Tribe*, 522 U.S. 329, 349 (1998), *quoting*, *DeCoteau v District County Court for Tenth Judicial Dist.*, 420 U.S. 425, 447 (1975).
[63] *South Dakota v Yankton Sioux Tribe*, 522 U.S. at 333.
[64] *South Dakota v Yankton Sioux Tribe*, 522 U.S. at 349 (citations omitted).

Article 1 of the 1855 Saginaw Treaty states:

> The United States will withdraw from sale, for the benefit of said Indians, as herein provided, all the unsold public lands within the State of Michigan embraced in the following description...[65]

The clear language of Article 1 states that only "unsold public lands" will be withdrawn. The "sold" lands were not withdrawn. The sold lands could not be, therefore, part of the alleged Isabella reservation because they were not withdrawn.

The clear language of Article I of the 1855 Saginaw Treaty includes only the "unsold public lands" in the alleged Isabella reservation. Partial summary judgment is therefore appropriate because there is no genuine issue of material fact.

IV. American Indian understanding controls understanding of treaties that are unclear. The Saginaw Chippewa understood any alleged reservation created under the 1855 Saginaw Treaty as containing only land not sold or disposed of by the United States prior to the withdrawal of the six townships from the public domain.

As previously discussed,[66] the plain language of the 1855 Saginaw Treaty limits any alleged reservation to unsold land at the time of withdrawal of that land from the public domain for the purpose of individual Tribal members receiving allotments. Assuming for argument's sake only that the plain language of the 1855 Saginaw Treaty does not resolve the issue, then evidence of the Saginaw Chippewa understanding of the 1855 Saginaw Treaty and the 1864 Treaty establish beyond debate that the Saginaw Chippewa understood those two treaties as not including sold or otherwise disposed of lands at the time the six townships were withdrawn from the public domain.

In *Oregon Department of Fish and Wildlife v Klamath Indian Tribe*,[67] the United States Supreme Court considered how to interpret language in an agreement and found that

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[65] 1855 Saginaw Treaty, art. 1 (emphasis in original).
[66] See above, section III.
[67] *Oregon Department of Fish and Wildlife v Klamath Indian Tribe*, 473 U.S. 753 (1985).

interpretations contrary to the plain language and the historical context cannot survive. The *Oregon* Court considered whether tribal members had a right to hunt and fish outside of the reservation boundaries established in 1901.[68] Finding that the right did not survive, the *Oregon* Court stated:

> Thus, even though "legal ambiguities are resolved to the benefit of the Indians," courts cannot ignore plain language that, viewed in historical context and given a "fair appraisal," clearly runs counter to a tribe's later claims. Careful examination of the entire record in this case leaves us with the firm conviction that the exclusive right to hunt, fish, and gather roots, berries, and seeds on the lands reserved to the Klamath Tribe by the 1864 Treaty was not intended to survive as a special right to be free of state regulation in the ceded lands that were outside the reservation after the 1901 Agreement. The judgment of the Court of Appeals is therefore reversed.[69]

The language of the 1855 Saginaw Treaty states "[t]he United States will withdraw from sale, for the benefit of said Indians, as herein provided, all the unsold public lands" in six townships in Isabella County and two townships on the north side of Saginaw Bay.[70] As discussed above,[71] a "fair appraisal" of this plain language includes only the "unsold public lands" in the alleged Isabella reservation.

Words and actions of the Saginaw Chippewa demonstrate that they understood that lands sold by or disposed of by the United States prior to the withdrawal of the six townships from the public domain were not part of the alleged Isabella reservation. In selecting the two townships on the north side of Saginaw Bay, the Saginaw Chippewa ran into difficulties because there was not enough land from which to select allotments.[72] The Saginaw Chippewa sent a petition to the

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[68] *Oregon Department of Fish and Wildlife*, 473 U.S. at 764.
[69] *Oregon Department of Fish and Wildlife*, 473 U.S. at 774 (citations omitted).
[70] 1855 Saginaw Treaty, art. 1 (emphasis in original).
[71] See Section III above.
[72] Anthony G. Gulig, *An Historical Analysis of the Saginaw, Black River and Swan Creek Chippewa Treaties of 1855 and 1864*, 51 (*An Historical Analysis)* (previously provided to the Court as a hyperlinked document pursuant to court order).

United States stating that there was not enough land from which to select allotments because "the greatest proportion of them are selected by the State as Swamp lands."[73] The Swamp Land Act of 1850,[74] "made a grant in praesenti; in other words, the title then passed to all lands which at that date were swamp lands, and the only matters thereafter to be considered were those of identification."[75] The petition shows that the Saginaw Chippewa understood that they did not receive all the land within the townships.

The Saginaw Chippewa selected allotments in the late 1850s and early 1860s. In 1857 and 1861, the Indian agent forwarded a list of those selections to Washington, D.C.[76] In both lists, the Saginaw Chippewa selected no school lands.[77] School lands are lands "granted to the State for the use of schools."[78] The Saginaw Chippewas' choice not to select any school lands demonstrates their understanding that the alleged Isabella reservation did not contain sold lands.

Article II of the 1864 Treaty repeats the formula of "unsold lands" in the 1855 Saginaw Treaty:

> In consideration of the foregoing relinquishments, the United States hereby agree to set apart for the exclusive use, ownership, and occupancy of the said *of the said* Chippewas of Saginaw, Swan Creek, and Black River, all of the unsold lands within the six townships in Isabella County, reserved to said Indians by the treaty of August 2, 1855, aforesaid....[79]

The language and historical context of the treaties allow only one reading: The alleged Isabella reservation did not contain the sold or other disposed of lands as of the date of the withdrawal of six townships for the purpose of individual Tribal members receiving allotments.

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[73] Gulig, *An Historical Analysis* at 51.
[74] Act of Congress, September 28, 1850, ch. 84, 9 Stat. 519.
[75] *Michigan Land & Lumber Co. v Rust*, 168 U.S. 589, 591 (1897).
[76] Gulig, *An Historical Analysis* at 60.
[77] Gulig, *An Historical Analysis* at 60.
[78] *Cooper v Roberts*, 59 U.S. 173, 179 (1856).
[79] 1864 Treaty, art. II, 14 Stat. at 42 (italicized language in original).

There is no genuine issue of material fact. Partial summary judgment is appropriate as a matter of law.

V. American Indian Tribes making claims about sovereignty are not considered "persons" under 42 U.S.C. § 1983. The Saginaw Chippewa Tribe is making claims about sovereignty in its complaint under 42 U.S.C. § 1983. The Saginaw Chippewa Tribe is not a "person" under 42 U.S.C. § 1983.

The Saginaw Chippewa Indian Tribe has brought a claim under 42 U.S.C. § 1983. The Tribe is not, however, a "person" who can bring suit under 42 U.S.C. § 1983 for violation of its sovereignty. The Tribe seeks to protect only communal sovereign rights to a reservation. Therefore, the Saginaw Chippewa Indian Tribe's claim under 42 U.S.C. § 1983 should be dismissed with prejudice.

Section 1983 states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress…[80]

The question is whether an American Indian tribe qualifies to sue under Section 1983. A tribe is not a "citizen of the United States." Is it an "other person" entitled to sue?

The United States Supreme Court addressed the ability of American Indian tribes to sue as "persons" under 42 U.S.C. § 1983 in *Inyo County v Paiute-Shoshone Indians*.[81] In *Inyo County*, an American Indian tribe and its tribal gaming company asserted that sovereign

[80] 42 U.S.C. 1983.
[81] *Inyo County v Paiute-Shoshone Indians*, 538 U.S. 701 (2003).

immunity prevented a California county's district attorney from seizing employment records of the company.[82] The tribe sought, among other things, compensatory damages under 42 U.S.C. § 1983.[83]

The *Inyo County* Court stated that "[s]ection 1983 was designed to secure private rights against government encroachment, not to advance a sovereign's prerogative to withhold evidence relevant to a criminal investigation."[84] Finding that "[i]t is only by virtue of the Tribe's asserted 'sovereign' status that it claims immunity from the County's processes"[85] and not by any alleged violation of the Fourth Amendment,[86] the Court "[h]eld that the Tribe may not sue under § 1983 to vindicate the sovereign right it here claims."[87]

In *Keweenaw Bay Indian Community v Rising*,[88] the Sixth Circuit considered *Inyo County*[89] and interpreted it limitedly. First it stated that:

> There are at least two plausible ways to interpret the Court's *Inyo County* decision. First, it could be that a tribe is not a "person" within the meaning of § 1983 whenever it sues to vindicate rights that are rooted in its status as a sovereign, or have some connection to its sovereignty. Second, it could be that a tribe is not a "person" only when it sues to vindicate its sovereign immunity specifically, as in *Inyo County*.[90]

The *Keweenaw Bay* Court then reversed the District Court below because it had adopted the first theory.[91] The Sixth Circuit:

> remand[ed] this case to the District Court to determine whether the Community was entitled to the federal funds (a) only as a result of its sovereignty, or (b)

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[82] *Inyo County*, 538 U.S., at 704.
[83] *Inyo County*, 538 U.S., at 706.
[84] *Inyo County*, 538 U.S., at 712.
[85] *Inyo County*, 538 U.S., at 711.
[86] *Inyo County*, 538 U.S., at 711.
[87] *Inyo County*, 538 U.S., at 712.
[88] *Keweenaw Bay Indian Community v Rising*, 569 F.3d 589 (6th Cir. 2009).
[89] *Keweenaw Bay Indian Community*, 569 F.3d at 595-96.
[90] *Keweenaw Bay Indian Community*, 569 F.3d at 596 (footnote omitted).
[91] *Keweenaw Bay Indian Community*, 569 F.3d at 595-596.

> simply because it provides certain social services. If it is the latter, then Community's § 1983 suit would not be in any way dependent on its status as a sovereign, and it should be considered a "person" within the meaning of that statute, so long as other private, non sovereign entities could likewise sue under § 1983.[92]

The Saginaw Chippewa Indian Tribe seeks injunctive relief under 42 U.S.C. § 1983 to assert sovereignty over an alleged treaty-based reservation. This is not a right belonging to an individual tribal member, and it is not like a private action to protect civil rights under the Constitution or laws. Therefore, the reasoning of *Keweenaw Bay* does not apply to this case.

Rather this case is similar to *Skokomish Indian Tribe v United States*.[93] In *Skokomish*, the Skokomish Indian Tribe sued for damages to its treaty reserved fishing rights.[94] The *Skokomish* Court stated:

> The Tribe here is not suing as an aggrieved purchaser, or in any other capacity resembling a 'private person.' Rather, the Tribe is attempting to assert communal fishing rights reserved to it, as a sovereign, by a treaty it entered into with the United States. Recognizing that 'section 1983 was designed to secure private rights against government encroachment,' as well as the 'longstanding interpretive presumption that 'person' does not include the sovereign,' we conclude that the Tribe may not assert its treaty-based fishing rights under section 1983.[95]

The Tribe asserts only communal, sovereign rights to a reservation. Under *Inyo* and *Keweenaw Bay Indian Community*, the Tribe has no 42 U.S.C. § 1983 action.

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[92] *Keweenaw Bay Indian Community*, 569 F.3d at 596.
[93] *Skokomish Indian Tribe v United States*, 401 F.3d 979 (2005).
[94] *Skokomish Indian Tribe*, 401 F.3d, at 987.
[95] *Skokomish*, 401 F.3d, at 987 (citations omitted & brackets in original).

CONCLUSION

Assuming for argument's sake that the 1855 Saginaw Treaty or the 1864 Treaty established the alleged Isabella reservation, the reservation does not contain the land sold or disposed of before the unsold land was withdrawn from the public domain for purpose of the individual Tribal members receiving allotments. The Indian Claims Commission ruled so, and the Tribe and the United States are collaterally estopped from challenging the ruling. The plain language of the 1855 Saginaw Treaty and the 1864 Treaty expressly includes only the "unsold public lands" in the alleged Isabella reservation. The Saginaw Chippewa understanding of the two treaties as demonstrated in their own words and actions was that the alleged Isabella reservation did not include lands sold or disposed of before the land was withdrawn from the public domain for purpose of the individual tribal members receiving allotments.

The Tribe also asserts a 42 U.S.C. § 1983 claim. The Tribe is not a "person" under the claim because it asserts only sovereign rights.

Summary Judgment is appropriate.

Respectfully submitted,

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Dated: March 5, 2010

PROOF OF SERVICE

On March 5, 2010, I directed my secretary, Robbin 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' BRIEF IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT

/s/ Todd B. Adams
Todd B. Adams

s:cases/2005/saginaw chips(boundary)/def brief support partial judgment.doc
lf/Saginaw Chippewa(boundary)/def brief support partial judgment