

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

**FILED - MQ**  
September 13, 2010 10:59 AM  
TRACEY CORDES, CLERK  
U.S. DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
BY: slk / Scanned by CM 10/13

THE LAC VIEUX DESERT BAND OF LAKE  
SUPERIOR CHIPPEWA INDIANS TRIBAL  
COUNCIL, and the MEMBERS OF THE TRIBAL  
COUNCIL, JAMES H. WILLIAMS JR.,  
JOETTE PETE-BALDWIN, MICHELLE HAZEN  
ALLEN, MISAABE MCGESHICK,  
TRACY R. PETE, GIIWEGIIZHIGOOKWAY  
MARTIN, ROBERTA L. IVEY, TYRONE  
MCGESHICK, and SHASTA KLINGMAN,  
Each an individual citizen of the Lac Vieux  
Desert Band, a federally-recognized Indian  
Tribe,

Case No.2:10-cv-223

Hon. R. Allan Edgar  
U.S. District Judge

Hon. Timothy P. Greeley  
U.S. Magistrate Judge

Petitioners,

v

LAC VIEUX DESERT BAND OF LAKE  
SUPERIOR CHIPPEWA INDIANS TRIBAL COURT,  
JUDGE BRADLEY DAKOTA, in his  
individual capacity, THE LAC VIEUX  
DESERT BAND TRIBAL POLICE, and  
THE IRON COUNTY SHERIFF'S  
DEPARTMENT,

Respondents.

**SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS UNDER  
25 U.S.C. §1303 AND REQUEST FOR EXPEDITED CONSIDERATION**

The Petitioners, the Tribal Council of the Lac Vieux Desert Band of Lake Superior Chippewa Indians (hereinafter "Petitioners" or "Tribal Council"), by and through their attorneys, Rosette & Associates, hereby provide to the Court, by way of supplement, additional items for its review and consideration.

On September 9, 2010, the Petitioners filed a *Petition for Writ of Habeas Corpus Under §1303 and Request For Expedited Consideration* with this Court. Since the date of the initial

Petition, other events occurred and additional filings were made in other courts, also having jurisdiction to grant habeas relief. These additional filings included:

1. *An Emergency Ex Parte Petition for Habeas Relief*, Case No. I-10-4343-AH, on September 10, 2010 against the Lac Vieux Desert Band of Lake Superior Chippewa Indians Tribal Court, Judge Bradley Dakota, in his individual capacity, The Lac Vieux Desert Band Tribal Police, and The Iron County Sheriff's Department in the State of Michigan, 41st Circuit Court. (Attached as Exhibit A) On September 10, 2010, the Honorable Mary Brouillette Barglind reviewed the Petitioners pleadings, denied the Petitioners request for ex parte relief and set the matter for hearing on September 14, 2010 at 9:00 am.
2. *An Emergency Ex Parte Petition For Habeas Relief and Proposed Order*, Case No. 10-cv-78 through 82, was filed on September 11, 2010 against the Lac Vieux Desert Band Police Department and the Iron County Sheriff's Department, (attached as Exhibit B) with the Honorable Appellate Judge Wilson D. Brott. Judge Brott is the duly appointed LVD Court of Appeals Judge in accordance with the Constitution of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, Article V, Section 4 (a). (LVD Constitution attached as Exhibit C). Judge Brott was appointed at a Lac Vieux Desert Emergency Tribal Council Meeting on September 3, 2010 as no duly appointed Court of Appeals judge was sitting to hear the appeals of the parties. (Tribal Council Minutes attached as Exhibit D). Within approximately 90 minutes of filing, Judge Brott granted the Petitioners request for habeas relief in an order entitled *Order Granting Ex Parte Petition For Habeas Corpus*. (Attached as Exhibit E).

There is something particularly alarming about the next sequence of events in that upon receipt of Judge Brott's September 11, 2010 granting a writ of habeas corpus, attached to the Order was another Order from Judge Brott dated September 9, 2010. The September 9, 2010 order was issued in response to the Tribal Council's "Emergency Application for Stay of Execution of the Opinion and the Order Pending Appeal and Notice of Appeal" filed on September 8, 2010, in which the LVD Court of Appeals granted the Petitioners request for a stay of all orders issued by Judge Dakota in the election matter pending a hearing before the Court of Appeals and ordered the members of the Tribal Council be immediately released until the LVD Court of Appeals could conduct a hearing as to whether the stay granted should remain:

"[t]hat any bench warrants issued pursuant to Order Denying Stay of Execution and Order Pending Appeal, dated September 8, 2010, shall be immediately recalled, and each Tribal Council member of the Lac Vieux Desert Band of Lake Superior Indians who has been incarcerated pursuant to said order or any bench warrants issued therefrom, shall be immediately released from custody..."

(Attached as Exhibit F).

According to Judge Brott, the September 9, 2010 Order was transmitted on that same day to the Tribal Court Clerk (two (2) days earlier than the September 11, 2010 Order (*see* Exhibit F, page 1)), it was never distributed to the parties including the Petitioners. It appears that although the Order of September 9, 2010 was transmitted to Tribal Court Clerk, it was never forwarded to the parties in violation of Lac Vieux Desert Band Tribal Court Rule 11.102(A) which states "Decisions of the Appellate Court shall be placed in writing and signed by the participating Appellate Judge, and shall forthwith be transmitted to the Clerk of the Tribal Court to be distributed to all parties in the matter." Upon information and belief, Judge Dakota was aware of the September 9, 2010 Order but told the Clerk of the Tribal Court not to distribute or honor the

Order. This alarming omission kept the Petitioners unlawfully incarcerated for an additional two (2) days.

Upon receipt of the Orders issued by the Court of Appeals during the afternoon of Saturday, September 11, 2010, counsel for the Petitioners immediately informed and provided a copy of the Court of Appeals orders to the Iron County Sheriff's Department and demanded compliance with the Order and the immediate release of the Petitioners. Ultimately, although the Iron County Sheriff's Department was not willing to allow the Petitioners to leave the premises, Iron County elected to transport the Petitioners to the Lac Vieux Desert Band Tribal Police Station and upon arrival the Petitioners were released into the custody of the Lac Vieux Desert Band Tribal Police.

While the decision of the Iron County Sheriff and the County Prosecutor to honor, until otherwise told by a judge, the September 8, 2010 Order of Judge Bradley Dakota under MCR 2.615 but not immediately release from custody the Petitioners upon review of the LVD Court of Appeals Orders for the same reason, is not understood. What is even more troubling is the suppression from the parties of the September 9, 2010 Order of Judge Brott and outright opposition to honor either of the Orders of Judge Brott by both the Lac Vieux Desert Band Tribal Court, via Judge Dakota, and the Lac Vieux Desert Band Police Department.

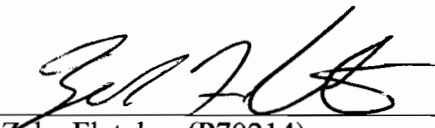
Upon return to the LVD reservation in Watersmeet, Michigan, counsel for the Lac Vieux Desert Band Tribal Council was informed that the Petitioners were free to go but if Judge Dakota issued more warrants the Tribal Police Officers would be obligated to enforce them. As such, the very real threat of further incarnation pursuant to the warrants issued by Judge Dakota without prior notice or the opportunity for a hearing prior to deprivation of liberty of the Petitioners remains.

WHEREFORE, the Petitioners, in light of the above stated circumstances, respectfully request this Court issue a Writ of Habeas Corpus and enjoin further detention of the Petitioners by the LVD Tribal Court or enforcement of any warrants issued by Judge Bradley Dakota. The Petitioners further request that the appellate review of the internal tribal election matter be resolved, without interference from Judge Bradley Dakota through threats of incarceration, by the LVD Court of Appeals as the proper judicial body vested with the final authority to opine on such issues pursuant to the LVD Constitution.

Respectfully submitted,

ROSETTE & ASSOCIATES, PC

Dated: 9/13/10

By:   
Zeke Fletcher (P70214)  
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Indians Tribal Council

# **EXHIBIT A**

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR IRON COUNTY MICHIGAN

THE LAC VIEUX DESERT BAND  
OF LAKE SUPERIOR CHIPPEWA  
INDIANS TRIBAL COUNCIL,  
and the members of the  
Tribal Council: JAMES H.  
WILLIAMS JR., JOETTE PETE-  
BALDWIN, MICHELLE HAZEN

~~XXXXXXXXXX~~

ALLEN, MISAABE MCGESHICK,  
TRACY R. PETE,  
GIIWEGIIZHIGOOKWAY MARTIN,  
ROBERTA L. IVEY, TYRONE  
MCGESHICK, and SHASTA  
KLINGMAN, as individuals

Petitioners,

v

LAC VIEUX BAND OF LAKE  
SUPERIOR INDIANS TRIBAL COURT,  
JUDGE BRADLEY DAKOTA, in his  
individual capacity, THE LAC VIEUX  
DESERT BAND TRIBAL POLICE, and  
THE IRON COUNTY SHERIFF'S  
DEPARTMENT,

Respondents.

Zeke Fletcher (P70214)

Karrie Wichtman (P73817)

Rosette & Associates, PC

112 E. Allegan Street, Ste. 600

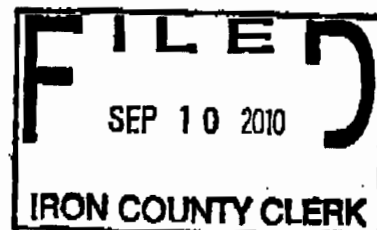
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Case No. I-10-4343-AN  
Hon. C. Joseph Schwedler

EMERGENCY EX PARTE  
PETITION  
FOR HABEAS CORPUS





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Attorneys for Lac Vieux Desert Band  
of Lake Superior Chippewa Indians  
Tribal Council

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**TO: The Michigan Circuit Court.**

LAC VIEUX DESERT TRIBAL COUNCIL ("TRIBAL COUNCIL"),  
each an individual, through its counsel ROSETTE &  
ASSOCIATES, respectfully request an expedited petition for  
the issuance of a writ of habeas corpus ex parte as follows:

**I. Jurisdiction.**

This Court has Jurisdiction under Mich. Const. Art. VI §  
13.

**II. Information on Prisoner.**

Upon information and belief, LAC VIEUX DESERT TRIBAL  
COUNCIL, are in the custody of Iron County Sheriff's Dept.  
Petitioners' locations are the Iron County Jail and Prisoner  
Nos. are unknown.

**III. Reasons for Incarceration.**

The Petitioners were taken into custody on the morning of  
September 8, 2010, because:

a. The LVD Tribal Court denied the Petitioner



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WILLIAMS' Motion to Stay Execution of the August 19, 2010, written order, filed under 10-CV-81. Both Petitioners' Motions and Applications for Stay are pending in the LVD Court of Appeals.

- b. The LVD Tribal Court, under J. Dakota, found WILLIAMS and TRIBAL COUNCIL in Civil Contempt for willfully disobeying or resisting the execution of a lawful order of the LVD Tribal Court. (J. Dakota, Execution of Judgment and Order, Sep. 8, 2010).
- c. No known state law exists for detaining the Petitioners and the September 8, 2010 Order does not authorize any office's of the Iron County Sheriff's Department to have custody of the Petitioners.
- d. The Petitioners were removed from Lac Vieux Desert Tribal lands and moved to a Michigan county jail.

**IV. The Incarceration Constitutes an Unlawful Detainer.**

**a. Michigan law**

The right to Writ of Habeas Corpus is guaranteed under the Michigan Constitution. Mich. Const. Art. I § 12.

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The only way a Michigan State jail could hold an Indian prisoner would be under the color of state law. For a state jail to hold the prisoner of an Indian tribe, an intergovernmental agreement must exist. Otherwise, detaining a citizen of the State of Michigan in jail without cause constitutes unlawful imprisonment. Mich. Pen. Code 740.349b ("A person commits the crime of unlawful imprisonment if he or she knowingly restrains another person under any of the following circumstances: (a) The person is restrained by means of a weapon or dangerous instrument. . . . 'Restrain' means to forcibly restrict a person's movements or to forcibly confine the person so as to interfere with that person's liberty without that person's consent or **without lawful authority.**"(emphasis added)); accord M Civ JI 116.21.

In this case, the Indian detainees the TRIBAL COUNCIL were removed from an Indian reservation and imprisoned in a Michigan State jail pursuant to an order of entered by the LVD Tribal Court. The state jail has no legal basis or justification under Michigan law to hold the TRIBAL COUNCIL. In fact the Tribal Court September 8, 2010 Order only permits the LVD Tribal Police Officers (or any deputized officer) to take lawful custody of the Petitioners under the LVD Tribal Code.

To any Police Officer of the Lac View [sic] Desert police force or any deputized officer thereof, you

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are hereby directed to take the following person (s) into lawful custody under the General Contempt provision of the LVD Tribal Code for Willful disobedience or resistance to the execution of a lawful order of the Court.

(J. Dakota, Execution of Judgment and Order, Sep. 8, 2010).

Although orders of a tribal court are presumed valid pursuant to MCR 2.615, but there are limitations of the validity of tribal court orders:

(C) A judgment, decree, order, warrant, subpoena, record, or other judicial act of a tribal court of a federally recognized Indian tribe that has taken the actions described in subrule (B) is presumed to be valid. **To overcome that presumption, an objecting party must demonstrate that**

(1) the tribal court lacked personal or subject-matter jurisdiction, or

(2) the judgment, decree, order, warrant, subpoena, record, or other judicial act of the tribal court

(a) was obtained by fraud, duress, or coercion,

(b) was obtained without fair notice or a fair hearing,

(c) is repugnant to the public policy of the State of Michigan, or

(d) is not final under the laws and procedures of the tribal court.

(emphasis added).

In the instant matter, the order of the LVD Tribal Court

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was obtained without fair notice or a fair hearing and is not a final order under the procedures of the tribal court. The Tribal Council filed an Application for Stay of Execution of the Opinion and the Order Pending Appeal [of the Tribal Court's August 27, 2010 order] on August 30, 2010. The LVD Tribal Court, through Judge Dakota, entered the September 8, 2010 Order along with a directive for the LVD Tribal Police to arrest and detain the members of the Tribal Council without an opportunity for a hearing, no opportunity to post bail/bond, and an indefinite conditional jail sentence.

Moreover, on August 30, 2010 the Tribal Council filed a Notice of Appeal with the LVD Appellate Court, putting Judge Dakota and the other parties of the intention to appeal the decisions and orders of Judge Dakota. The exhaustion of legal remedies had not occurred and the LVD Tribal Court was notified of the intent to appeal.

Most importantly, Chapter 2, Rule 2.702 of the LVD Court Rules of 2008 provides that if an appeal is pending then a party who fails to follow the decision of the court is not subject to contempt of court:

A party who fails to follow the decision of the court, provided no pending appeal has been filed, will be subject to contempt of court (emphasis added).

Due to the lack of due process, fair notice, an opportunity to a fair hearing and blatant ignorance of the LVD Court Rules, the Petitioners carried the burden to overcome the presumption of validity granted to tribal court orders under MCR 2.615.

In addition to MCR 2.615, the only other theory by which the State jail can hold another government's prisoners is under a contract theory, namely an intergovernmental compact. However, no such compact or contract exists. Therefore, the Iron County Sheriff's detainment the TRIBAL COUNCIL is unlawful and tortious.

Furthermore, even if the Sheriff of Iron County ("Sheriff") signed a formal agreement to detain prisoners under Indian Tribal prisoners, such an agreement is unlawful. As an officer of the executive branch, the Sheriff has no authority to bind the State of Michigan or the County of Iron. To wit, a member of the executive branch enforces the law - only the legislature has the power to make state law, including intergovernmental agreements. Mich. Const. Art III § 2 ("No person exercising powers of one branch shall exercise powers properly belonging to another branch except as expressly provided in this constitution."); see also, *Pueblo of Santa Ana v. Kelley*, 104 F.3d 1546, 1551 (10th Cir. 1997) (citing *State ex. rel. Clark v. Johnson*, 904

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P.2d 11 (N.M. 1995)).

Thus, without a delegation of power or an agreement ratified by the legislature of Iron County or the State of Michigan, the Sheriff of Iron County has no power to (1) make such agreements or (2) hold prisoners under the color of Tribal law. Furthermore, Article III § 5 of the Michigan Constitution does not apply to an agreement to hold Indian tribal prisoners, because such an agreement is not "for the performance, financing or execution of [the agency's] respective function[]." Such an agreement only serves the functions of the Indian tribe, not the State's government or subdivision thereof.

In the context of the Indian Gaming Regulatory Act, 25 U.S.C. § 2710 (d), many federal circuit courts have ruled that only the legislative body of a government has the power to lawfully bind the sovereign. *Kelley*, 104 F.3d at 1553-1555 (citing *Narragansett Indian Tribe of Rhode Island v. Rhode Island*, Nos. 94-0618-T, 94-0619-T, 95-0034-T, 1996 WL 97856, at \*2 (D.R.I. Feb. 13, 1996) (holding executive branch lacked authority under state law to bind state to a gaming compact); *Kickapoo Tribe of Indians v. Babbitt*, 827 F.Supp. 37, 46 (D.D.C 1993) (holding same)); but see *Willis v. Fordice*, 850 F.Supp. 523, 532-33 (S.D. Miss. 1994). Such a holding would depend on the state in question's



constitution.

In Michigan's case, the Constitutional separation of powers requirement is clear: state officials and executives may bind the state in intergovernmental agreements in order to further state business. Mich. Const. Art. III § 5. However, beyond the functions of the agency, the official or executive must leave the creation of intergovernmental agreements to the legislative branch. Mich. Const. Art III § 2. Thus, any agreement entered into by the Sheriff of Iron County to detain Tribal prisoners is unlawful and unconstitutional. Such an agreement would only be made for the convenience of the Indian tribe. The agreement does not further the function of the State of Michigan; the prisoners and criminals are under federal and tribal jurisdiction. Michigan has no say in the crimes or punishments of those prisoners.

In sum, because the Sheriff of Iron County has no legal basis under state law reason to hold the TRIBAL COUNCIL, the detention is unlawful. Moreover, because the Sheriff of Iron County has no lawful authority to bind the State or local government in an intergovernmental agreement with the Lac Vieux Desert Tribe, the detention of the TRIBAL COUNCIL is unlawful. Therefore, a Writ of Habeas Corpus should issue from this Court.



a. Tribal law

The Indian Civil Rights Act (ICRA) would control a federal or tribal court proceeding. 25 U.S.C. § 1303. Under federal law, the courts of an Indian tribe may not deny procedural due process when petitioned for a writ of habeas corpus. See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 57 (1978). "In 25 U.S.C. §1303, the only remedial provision expressly supplied by Congress, the privilege of the writ of habeas corpus is made available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe." *Id.* (citations and quotes omitted). Thus, even if this Court denies this Petition, the courts of the United States will have jurisdiction to test the legality of Chairman WILLIAMS's and TRIBAL COUNCIL'S detention. However, this Petition need not go that far. This detention is clearly an unlawful detainer under LVD law.

First, the scienter requirement of "willful" has not been proven in a hearing before this Court. This "willful" scienter requirement is easily evaluated by the Court in the case of courtroom disorder or disrespect, known as "direct contempt." However, in the case of disobeying a court order, or "indirect contempt," the judge has a due process requirement to at least call the defendant before the Court. See, e.g., *In re Contempt of Henry*, Nos. 280372, 281318

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(Mich. Ct. App. Mar. 17, 2009) ("A defendant charged with contempt is entitled to be informed whether the proceedings are civil or criminal. Further, a defendant in a criminal proceeding is entitled to be informed of the charge, to be given an opportunity to prepare his or her defense, and to secure the assistance of counsel." (citations omitted)). In calling the defendant to the courtroom, the court can determine whether the scienter requirement for "willfully" disobeying the court order has been met.

In this case, WILLIAMS and the TRIBAL COUNCIL have been taken by force and put into custody without a hearing. As stated in other pleadings, the ambiguity of S. Dakota's August 19 Order has caused confusion as to whether the Order referred to the "second Tuesday," which is the 14th day, or to September 7th. (See Def. Tribal Council's Application for Stay at 6, Sep. 3 2010). Surely, upon waiting for some clarification of the date in the August 19 Order, the Petitioner cannot be said to be willfully disobedient. Furthermore, upon waiting for an appeal, the Petitioners have reasonable expectations that the Tribal Court (1) will stay the Order of August 19 AND (2) will not subject them to contempt of court under LVD law. See LVD Tribal Court Rules of 2008 2.702. Such expectations, without more guidance from the Court, show that Petitioners may not have "willfully" disobeyed of the Court's order.

Second, LVD Tribal Court Rules of 2008 2.702 provides that "[a] party who fails to follow the decision of the court, **provided no pending appeal has been filed**, will be subject to contempt." (emphasis added). The converse of the rule must also be true: if an appeal is pending, a party who fails to follow the decision of the court will not be held in contempt. This is especially true if the order in question is the subject of an appeal. While Rule 11.201 calls for continued enforcement of a judgment during an appeal and without an order to stay, reading the two rules together leads to a reasonable result: while Rule 11.201 allows this Court to continue to enforce its judgment, Rule 2.702 prevents the Court from holding any parties in contempt for not following a court order if an appeal is pending.

In this case, the result is also reasonable. Because the August 19, 2010 Order is pending appeal by Defendant Tribal Council, both Rules 11.201 and 2.702 apply to the enforcement of the August 19 Order. In other words, under Rule 11.201 J. Dakota is free to continue ordering the Election Board to hold new elections or even free to find a Constitutional way to have the candidates-elect provisionally sworn. However, Rule 2.702 prevents this Court from enforcing its Order through contempt and detention because Defendants TRIBAL COUNCIL have already given timely

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Notice of Appeal. In addition, WILLIAMS has filed a Notice and Claim of Appeal to the August 19 Order, concurrently with this Petition for a Writ.

Finally, the ICRA prevents Indian Tribes from incarcerating a person for more than one year or levying fines of more than \$5000. 25 U.S.C. § 1302(7). J. Dakota's Execution and Order for Arrest of September 8, 2010, is an open-ended punishment. The Tribal Court does not have the sovereign power to punish Petitioners to the extent contemplated by J. Dakota's September 8 Order. See, e.g., *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) (holding that the doctrine of implicit divestiture deprives Indian Tribes of some aspects criminal jurisdiction); accord 25 U.S.C. § 1302(7); 18 U.S.C. § 1153.

Taken as a whole, federal and LVD law require that a Writ of Habeas Corpus be issued for the TRIBAL COUNCIL. First, due process requirements were not met by J. Dakota's September 8 Order because evidence of "willful" scienter was not introduced to the Court. Second, LVD Tribal Court Rules 2.702 prevent the Tribal Court from enforcing judgment through contempt because defendant Tribal Council has an appeal pending. Finally, the ICRA prevents the Court from punishing Petitioner to the extent required by of the September 8 Order.

WHEREFORE the Petitioner respectfully asks that the Clerk

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of this Tribal Court be ordered to issue a Writ of Habeas Corpus directing the Respondents, HONORABLE JUDGE BRAD DAKOTA (Special Judge and LAC VIEUX DESERT TRIBAL POLICE to have the body and person of the LAC VIEUX DESERT TRIBAL COUNCIL immediately released ex parte.

Respectfully Submitted this September 10, 2010.

*Zeke Fletcher* /s/ Zeke Fletcher

Zeke Fletcher (P70214)

Karrie Wichtman (P73817)

Rosette & Associates, PC

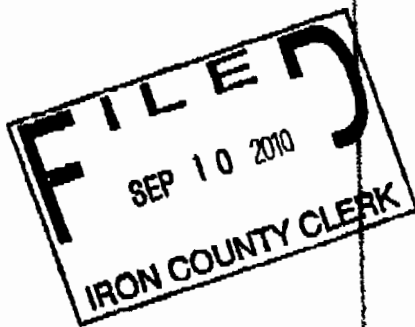
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Attorneys for Lac Vieux Desert Band  
of Lake Superior Chippewa Indians  
Tribal Council



IN THE CIRCUIT COURT FOR IRON COUNTY, MICHIGAN

THE LAC VIEUX DESERT BAND  
OF LAKE SUPERIOR CHIPPEWA  
INDIANS TRIBAL COUNCIL,  
and the MEMBERS OF THE  
TRIBAL COUNCIL, JAMES H.  
WILLIAMS JR., JOETTE PETE-  
BALDWIN, MICHELLE HAZEN

ALLEN, MISAABE MCGESHICK,  
TRACY R. PETE,  
GIIWEGIIZHIGOOKWAY MARTIN,  
ROBERTA L. IVEY, TYRONE  
MCGESHICK, and SHASTA

Case No. \_\_\_\_\_  
Hon. \_\_\_\_\_

[PROPOSED] ORDER FOR WRIT

HABEAS CORPUS EX PARTE



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of the following individuals of the TRIBAL COUNCIL,

JAMES H. WILLIAMS (2-26-1968)  
JOETTE PETE-BALDWIN (7-7-1971)  
MICHELLE HAZEN ALLEN (2-10-1973)  
MISAABE MCGESHICK (2-9-1975)  
TRACY R. PETE (6-19-1972)  
GIIWEGIIZHIGOOKWAY MARTIN (6-12-1949)  
REBERTA L. IVRY (11-10-1968)  
TYRONE MCGESHICK (2-11-1969)  
SHASTA KLINGMAN (6-11-1976)

released from detention at the Iron County Jail IMMEDIATELY.

DATED: September \_\_\_\_, 2010

SIGNED:

Judge, Michigan Circuit Court.

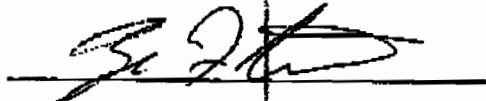
Ex Parte Petition for Habeas Corpus is hereby DENIED for failure of Petitioner to establish sufficient proofs for Ex Parte Relief. The hearing requirements and process set forth in MCR 3.300 shall be followed and a hearing on the Petition for Habeas Corpus will be held on Tuesday, September 14, 2010 at 9:00 a.m. in the Circuit Court for the County of Iron.

DATE: 9-10-10

  
MARY B. BARGLUND  
41st Circuit Court Judge

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Ezekiel Fletcher (P70214)  
Rosette & Associations, PC



# **EXHIBIT B**

LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS  
IN THE APPELLATE COURT

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THE LAC VIEUX DESERT BAND OF LAKE  
SUPERIOR CHIPPEWA INDIANS TRIBAL  
COUNCIL, and the MEMBERS OF THE TRIBAL  
COUNCL, JAMES H. WILLIAMS JR.,  
JOETTE PETE-BALDWIN, MICHELLE HAZEN  
ALLEN, MISAABE MCGESHICK,  
TRACY R. PETE, GIIWEGIIZHIGOOKWAY  
MARTIN, ROBERTA L. IVEY, TRYONE  
MCGESHICK, and SHASTA KLINGMAN,  
Each an individual citizen of the Lac Vieux  
Desert Band, a federally-recognized Indian  
Tribe,

Petitioners,

v

THE LAC VIEUX DESERT BAND  
TRIBAL POLICE, and  
THE IRON COUNTY SHERIFF'S  
DEPARTMENT

Respondents.

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Case No. \_\_\_\_\_

Hon. Wilson D. Brott

**EMERGENCY EX PARTE  
PETITON FOR WRIT OF  
HABEAS CORPUS AND  
PROPOSED ORDER**

**EMERGENCY EX PARTE PETITION FOR WRIT OF HABEAS CORPUS  
AND PROPOSED ORDER**

COMES NOW the Defendant-Appellees, the Tribal Council of the Lac Vieux Desert Band of Lake Superior Chippewa Indians (hereinafter "Defendant-Appellees" or "Tribal Council"), by and through their attorneys, Rosette & Associates, hereby submits this Emergency Ex Parte Petition for Writ of Habeas Corpus requesting an ex parte review of this Emergency Application and the immediate conditional release of the individual Tribal Council members from incarceration.

Petitions for a Writ of Habeas Corpus were filed with the LVD Tribal Court, the United

States District Court for the Western District of Michigan on Thursday September 9, 2010. Another Petition for a Writ of Habeas Corpus was filed in state court with the Circuit Court of Iron County of Michigan on September 10, 2010. Both the Federal Court and State Court have acted in terms of receiving the filings and have scheduled hearing dates for the Petitions. The LVD Tribal Court, however, has not set any hearing despite the circumstances. In fact, it's not even known what judge is assigned to hear the matter, if any.

Despite the fact the LVD Tribal Court seems to have the authority to act, set a hearing, or enter an immediate or conditional release the Petitioners from custody, no action has been taken at this point. The Petitioners remain incarcerated effectively as political prisoners, who are not accused of a crime, held without opportunity for a hearing, to post a bond for release, and are held for an indefinite term until they take legislative action in violation of the doctrine of separation of powers. No court can require a legislative body to take action duly vested with the legislative or executive branch of government.

The Tribal Council is prepared to call a meeting of the Council for September 14, 2010 and will swear in all of the new Executive Council in the event the Appellate Court does not issue a stay prior to that date. To that end, the Tribal Council is willing to follow an order entered by this Court that permits their immediate release, and be subject to incarceration in the event the new Executive Council is not sworn in on Tuesday, September 14, 2010, as required by Article IV, Section 2(c) of the LVD Constitution.

WHEREFORE, for the above stated reasons, Petitioners the individual members of the Tribal Council of the Lac Vieux Desert Band of Lake Superior Chippewa Indians respectfully requests this Court direct the conditional release of the members of the Tribal Council. We

request that any release of the Petitioners shall be conditional upon swearing in of the new Tribal Council on September 14, 2010 in the event this Court does not first issue a stay of the execution pursuant to the Application for Stay of Execution of the Opinion and the Order Pending Appeal filed with this Court on September 3, 2010 and the Emergency Application for Stay of Execution of the Opinion and the Order Pending Appeal and Emergency Notice of Appeal filed September 8, 2010 filed by the Tribal Council.

Respectfully submitted,

ROSETTE & ASSOCIATES, PC

Dated: September 11, 2010

By: /s/ Zeke Fletcher  
Zeke Fletcher (P70214)  
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Attorneys for Lac Vieux Desert Band of  
Lake Superior Chippewa Indians Tribal  
Council

LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS  
IN THE APPELLATE COURT

---

THE LAC VIEUX DESERT BAND OF LAKE  
SUPERIOR CHIPPEWA INDIANS TRIBAL  
COUNCIL, and the MEMBERS OF THE TRIBAL  
COUNCL, JAMES H. WILLIAMS JR.,  
JOETTE PETE-BALDWIN, MICHELLE HAZEN  
ALLEN, MISAABE MCGESHICK,  
TRACY R. PETE, GIIWEGHIZHIGOOKWAY  
MARTIN, ROBERTA L. IVEY, TRYONE  
MCGESHICK, and SHASTA KLINGMAN,  
Each an individual citizen of the Lac Vieux  
Desert Band, a federally-recognized Indian  
Tribe,

Case No. \_\_\_\_\_

Hon. Wilson D. Brott

Petitioners,

v

THE LAC VIEUX DESERT BAND  
TRIBAL POLICE, and  
THE IRON COUNTY SHERIFF'S  
DEPARTMENT

Respondents.

---

**[PROPOSED] ORDER**

This matter having come before the Court on the Petitioners Lac Vieux Desert Band of Lake Superior Chippewa Indians Tribal Council, and each individual Council Member as members of a federally-recognized Indian Tribe *Emergency Ex Parte Petition for Writ of Habeas Corpus*, and having reviewed the Petition and the Court being otherwise fully advised of the circumstances, the Court finds good cause to grant the immediate conditional release of the Petitioners.

It is therefore:

**ORDERED** the members of the Tribal Council as individuals and citizens of a federally-

recognized Indian Tribe, listed as:

JAMES H. WILLIAMS (2-26-1968)  
JOETTE PETE-BALDWIN (7-7-1971)  
MICHELLE HAZEN ALLEN (2-10-1973)  
MISAABE MCGESHICK (2-9-1975)  
TRACY R. PETE (6-19-1972)  
GIIWEGIIZHIGOOKWAY MARTIN (6-12-1949)  
ROBERTA L. IVEY (11-10-1968)  
TYRONE MCGESHICK (2-11-1969)  
SHASTA KLINGMAN (6-11-1976)

shall be immediately released from incarceration in the Iron County Jail Complex or any other detention center, correctional facility, whether tribal, state or federal.

It is **ORDERED FURTHER** that the LVD Tribal Police is directed to contact the Iron County Sheriff's Department to grant the release of the Petitioners.

It is **ORDERED FURTHER** that the release of the Petitioners is conditional upon swearing in of Alan Shively as Chairman; Joette Pete-Baldwin as Vice-Chairperson; Susan McGeshick, Treasurer; and Michelle Hazen-Smith, Secretary on Tuesday, September 14, 2010, in the event this Court does not order otherwise or issue a stay of the swearing in pending resolution of appeals duly filed with this Court.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_, 2010

---

Honorable Wilson D. Brott  
Lac Vieux Desert Appellate Court

LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS  
IN THE APPELLATE COURT

---

THE LAC VIEUX DESERT BAND OF LAKE  
SUPERIOR CHIPPEWA INDIANS TRIBAL  
COUNCIL, and the MEMBERS OF THE TRIBAL  
COUNCIL, JAMES H. WILLIAMS JR.,  
JOETTE PETE-BALDWIN, MICHELLE HAZEN  
ALLEN, MISAABE MCGESHICK,  
TRACY R. PETE, GIIWEGIIZHIGOOKWAY  
MARTIN, ROBERTA L. IVEY, TRYONE  
MCGESHICK, and SHASTA KLINGMAN,  
Each an individual citizen of the Lac Vieux  
Desert Band, a federally-recognized Indian  
Tribe,

Case No. \_\_\_\_\_

Hon. Wilson D. Brott

Petitioners,

v

THE LAC VIEUX DESERT BAND  
TRIBAL POLICE, and  
THE IRON COUNTY SHERIFF'S  
DEPARTMENT

Respondents.

---

**CERTIFICATE OF SERVICE**

I, Zeke Fletcher, state that on September 11, 2010, a copy of the **Emergency Ex Parte  
Petition for Writ of Habeas Corpus** and this **Proof of Service** was filed with the LVD  
Appellate court and was served on the persons listed either via email or U.S. Mail:

Lac Vieux Desert Tribal Police Department  
E23968 Choate Rd  
Watersmeet, MI  
c/o Tribal Police Chief

Iron County Sherriff's Department  
2 South 6th Street  
Crystal Falls, MI



c/o County Prosecutor  
[mpowell@weston@iron.org](mailto:mpowell@weston@iron.org)

The above statements are true to the best of my knowledge, information, and belief.

/s/ Zeke Fletcher  
Zeke Fletcher, Attorney  
Rosette & Associates, PC

# **EXHIBIT C**

# CONSTITUTION



LAC VIEUX DESERT  
BAND OF LAKE SUPERIOR  
CHIPPEWA INDIANS

CONSTITUTION  
OF THE  
LAC VIEUX DESERT BAND  
OF LAKE SUPERIOR CHIPPEWA INDIANS  
OF MICHIGAN

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CONSTITUTION OF THE LAC VIEUX DESERT BAND OF LAKE SUPERIOR  
CHIPPEWA INDIANS OF MICHIGAN

PREAMBLE

We, the members of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, in order to organize for the common good, to govern ourselves under our own laws and customs, to maintain and foster our tribal culture, to protect our homeland and to conserve and develop its natural resources, and to insure our rights guaranteed by treaty with the Federal Government, do establish and adopt this Constitution for the government, protection and common welfare of the Lac Vieux Desert Band pursuant to the Act of September 8, 1888 (102 Stat. 1577), and the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended. The Lac Vieux Desert Band of Lake Superior Chippewa Indians is also referred to in the Constitution as the "Lac Vieux Desert Band" and the "Band."

ARTICLE I — TERRITORY

Section 1. Territory. The territory of the Band shall encompass all lands which are now or hereafter owned by the Band or held in trust for the Band by the United States.

Section 2. Jurisdiction Not Restricted. The jurisdiction of the Band shall not be restricted to the territory described in Section 1 of the Article, but shall be exercised to the full extent of the Band's sovereign power.

Section 3. Treaty Rights Not Restricted. Nothing in this Article shall be construed as restricting any treaty rights, and any other rights, of the Band and its members.

ARTICLE II — MEMBERSHIP

Section 1. Membership. The membership of the Lac Vieux Desert Band shall consist of:

- (a) All persons whose names are listed on the approved membership roll of the Lac Vieux Desert Band dated August 15, 1990.
- (b) Descendants of persons whose names are listed on the approved base membership roll of the Band dated August 15, 1990.

Section 2. Dual Membership Prohibition. No person shall be eligible to be a member of the Lac Vieux Desert Band if that person is enrolled in another federally recognized Indian tribe, band or group. Any member of the Lac Vieux Desert Band who applies to be and is accepted as a member of another federally recognized Indian tribe, band or group shall be subject to disenrollment and the forfeiture of all rights and benefits to which Band members are entitled by virtue of their membership.

Section 3. Membership Procedure. The Tribal Council may pass ordinances governing enrollment and disenrollment, Provided, That the Tribal Council shall have no power to establish substantive requirements for membership in addition to those established in this Article or to adopt members who do not meet the requirements specified in Section 1 above. The only grounds for disenrollment shall be that the person is dually enrolled as a member with another federally recognized tribe, band or group or that the person does not meet the membership requirements specified in Section 1 above.

Section 4. Right of Appeal. Any person whose application for membership has been denied or who is subject to disenrollment by the Tribal Council shall have a right of appeal to the Tribal Judiciary.

Section 5. Membership Rights of Adopted Children. Any Indian child eligible for membership who is adopted by a non-Indian family shall be eligible for membership in the Band notwithstanding such adoption.

### ARTICLE III — TRIBAL COUNCIL

#### Section 1. Composition and Term of Office.

- (a) The Tribal Council of the Lac Vieux Desert Band shall be composed of nine (9) members of the Band, consisting of the executive officers and five (5) council members.
- (b) The term of office for all members of the Tribal Council shall be two (2) years.
- (c) The executive officers of the Tribal Council shall consist of a Chairperson, Vice-Chairperson, Secretary and Treasurer.
- (d) The executive officers shall be the members of the Band who receive the highest number of votes in the tribal election of each executive office.
- (e) The Tribal Council members shall be the five (5) highest vote getters in the tribal election for council members.

#### Section 2. Duties of Tribal Council Executive Officers: Records.

- (a) The Chairperson of the Tribal Council shall:
  1. Preside at all meetings of the Tribal Council.
  2. Represent the Band in its relations with other governments and organizations, in a manner consistent with this Constitution; Provided, That the Tribal council shall not authorize the Chairperson to take any action which, under this Constitution, must be taken by the Tribal Council.

3. Appoint members of all committees of the Tribal Council, subject to the approval of the Council and in accordance with the rules and procedures of the Tribal Council.
4. Call special meetings of the Tribal Council and of any committee of the Council, when appropriate, in accordance with this Constitution and the rules and procedures of the Tribal Council.
5. Receive reports of all committees and deliver such reports or cause such reports to be delivered to the Tribal Council.
6. Be an ex-officio member of all committees of the Tribal Council.
7. Perform such other duties as may be specified by this Constitution, by ordinance, or as required by the Tribal Council.

#### (b) The Vice-Chairperson of the Tribal Council shall:

1. Serve and perform the duties of the Chairperson in the Chairperson's absence.
2. Assume responsibility for those functions delegated to him/her by the Chairperson.
3. Perform other functions as required by the rules and procedures of the Tribal Council.

#### (c) The Treasurer of the Tribal Council shall:

1. Administer and monitor all fiscal matters of the Band.
2. Submit monthly financial reports to the Tribal Council, and at such other times as may be requested by the Tribal Council.
3. Perform such other duties as required by the rules and procedures of the Tribal Council.
4. Acquire a surety bond, in an amount and with a surety company satisfactory to the Tribal Council, to administer the Band's fiscal affairs.

#### (d) The Secretary of the Tribal Council shall:

1. Submit a report of the minutes of all Tribal Council and tribal membership meetings to the Tribal Council, and post such reports for the general membership.
2. Maintain and protect the Tribal Seal.
3. Keep the membership informed as to the status of treaty and other rights.



4. Perform other functions as required by the rules and procedures of the Tribal Council.

#### Section 3. Records of the Band.

- (a) The Tribal Council shall provide access for review by any tribal member or his/her authorized representative of the records of the Band; Provided, That such review shall be conducted during normal office hours of the Tribal Council, in accordance with the rules and procedures established by the Tribal Council, and not inconsistent with any other provision of this Constitution, Federal law, or individual tribal members and tribal employees' rights to privacy.
- (b) All Band records are the exclusive property of the Lac Vieux Desert Band and shall be transferred by Tribal Council officers leaving office to their successors in office.

#### Section 4. Meetings of the Tribal Council and Membership.

- (a) Regular Meetings. The Tribal Council shall meet in official session at least twelve (12) times a year, at monthly intervals, at such time and place as shall be established by resolution.
- (b) Special Meetings. Special meetings of the Tribal Council:
  1. May be called by the Chairperson of the Tribal Council at his/her discretion,
  2. Shall be called by the Chairperson of the Tribal Council upon the written request of any three (3) Council Members, or
  3. Shall be called upon the petition of ten percent (10%) of the eligible tribal voters;

Provided, That at least seventy-two (72) hours' written notice of such meeting shall be given to each Council Member, by personal service or by certified mail, return receipt requested, sent to the Council Member's usual place of residence, or left at the Council Member's usual place of residence with some person of suitable age and discretion residing there; However, notice may be waived by attendance at the meeting. Notice of the special meeting shall also be posted in the Tribal Center. If the Chairperson refuses or fails to call the meeting, the three (3) Council Members who requested the meeting in writing may call the meeting; Provided, That the foregoing notice requirements are complied with. If the Chairperson refuses or fails to call the special meeting requested by petition, any Council Member may call the meeting; Provided, That the foregoing notice requirements are complied with. No action taken at a special

meeting shall be valid unless these notice requirements have been complied with.

- (c) Emergency Meetings. An emergency meeting of the Tribal Council may be called upon less than seventy-two (72) hours' written notice, notwithstanding Section 4(b) of this Article, if such meeting is necessary for the preservation or protection of the health, welfare, peace, safety, or property of the Band. Efforts shall be made to give notice to each Tribal Council member. Such notice shall state the purpose, time and place of such meeting. No business other than that stated in the notice shall be transacted at such meeting.
- (d) Tribal Membership Meetings. The Tribal Council shall hold an annual meeting of Band members for the purposes of informing the membership of the status of the affairs of the Band, holding elections when required by this Constitution, and transacting such other business as may be deemed desirable by the Tribal Council or the Band members. In addition, the Tribal Council may hold special tribal membership meetings when it deems appropriate. Special tribal membership meetings shall also be called by the Tribal Council upon the petition of ten percent (10%) of the eligible tribal voters; Provided, That not less than five (5) nor more than thirty (30) days' notice of such meeting is given to the tribal members.

#### (e) Open Meetings: Closed Sessions.

1. All meetings of the Tribal Council called pursuant to this Article shall be open to tribal members and tribal members shall have a reasonable opportunity to be heard under such rules and regulations as the Council may prescribe; Provided, However, That the Council may meet in closed session for the following purposes:
  - a. Personnel matters.
  - b. Claims against the Band, or
  - c. Business matters involving consideration of bids or contracts which are privileged or confidential.
2. The Tribal Council may, in its discretion, determine not to keep a record of all or any part of the discussion in closed session; Provided, That the reason for such determination shall be recorded, and a record shall be kept of any action taken in closed session. Such record may be withheld from inspection by tribal members pending final disposition of the matter concerned.

#### (f) Action by the Tribal Council.

1. No official action may be taken by the Tribal Council unless a quorum is

present.

2. The Tribal Council shall act only by ordinance, resolution or motion.
3. Tribal Council action shall be determined by a majority of the Tribal Council members who vote, unless a greater vote is required under this Constitution.

#### Section 5. Quorum at Tribal Council and Tribal Membership Meetings.

- (a) A quorum of the Tribal Council shall consist of five (5) members.
- (b) The Chairperson shall be counted in determining whether a quorum exists.
- (c) The Chairperson shall only vote to break a tie vote in the Tribal Council.
- (d) Tribal Membership Meetings. Tribal business, other than election, conducted at tribal membership meetings can take place; Provided, That at least thirty-three percent (33%) of the eligible voting members of the Band are present.

#### Section 6. Conflict of Interest.

- (a) When a council member has a personal interest in a matter to be voted upon by the Council, other than interests held in common by all Band members, which would require balancing his/her personal interest against the best interests of the Band, such member shall abstain from voting on that matter.
- (b) The fact that a member may not vote on a matter before the Council because of a conflict of interest shall not prevent that member from otherwise participating in that Council meeting.

### ARTICLE IV — POWERS AND DUTIES OF THE TRIBAL COUNCIL

Section 1. Power of the Tribal Council. The Tribal Council of the Lac Vieux Desert Band shall be vested with all powers of its inherent sovereignty including, but not limited to, the following and shall exercise such powers to the fullest extent permitted by Federal law:

- (a) To promote and protect the health, safety, education, and general welfare of the Band and its members;
- (b) To promulgate ordinances, and adopt resolutions not inconsistent with this Constitution, and to enforce the same;

- (c) To negotiate with Federal, State and local governments, and other tribes;
- (d) To purchase, lease, take by gift, take by devise or bequest, eminent domain, or otherwise acquire land, interests in land, personal property or other assets which the Tribal Council may deem beneficial to the Lac Vieux Desert Band;
- (e) To approve or veto any sale, disposition, lease or encumbrance of Lac Vieux Desert Band land, interests in land, personal property or other assets of the Band, not inconsistent with Article XI on tribal land;
- (f) To manage the economic affairs, enterprises, property, both real and personal, and other interests of the Band;
- (g) To levy and collect taxes or assessments against members, non-members, and businesses;
- (h) To provide for the manner of making, holding and revoking assignments of the Lac Vieux Desert Band's land or interests therein;
- (i) To employ legal counsel; Provided, That this power shall be subject to the approval of the Secretary of the Interior so long as required by Federal law;
- (j) To charter subordinate organizations, including housing, financial and health boards, and to delegate to such organizations or to any subordinate boards or officials of the organizations, the power to manage the economic affairs and enterprises of the Lac Vieux Desert Band, reserving the right to review any action taken by virtue of such delegated power;
- (k) To exclude from the lands of the Band persons, or other entities, not legally entitled to be present thereon;
- (l) To provide by ordinance for the jurisdiction of the Band over Indian Child Welfare matters and all other domestic relations matters; and
- (m) To take action, not inconsistent with this Constitution, which shall be necessary and proper to carry out the sovereign powers of the Band.

Section 2. Ordinances as Law. In addition to this Constitution, ordinances of the Tribal Council adopted pursuant to this Constitution shall have the status of the law of the Lac Vieux Desert Band and shall govern all people subject to the Band's jurisdiction.

Section 3. Further Powers. The Tribal Council may exercise, in addition to its sovereign tribal powers, such additional powers as may in the future be delegated to it by law, by the Secretary of the Interior, or by any other duly authorized official or agency of the United States or of any state.

Section 4. Powers of the Band Not Diminished. Any rights and powers heretofore vest-

ed in the Band but not expressly referred to in this Constitution shall not be diminished by this Constitution.

## ARTICLE V — TRIBAL JUDICIARY

Section 1. Judicial Power. The judicial power of the Lac Vieux Desert Band shall be vested in the Lac Vieux Desert Judiciary which shall consist of the Tribal Court, whose judges may by designation sit as a Court of Appeals, and such other inferior courts as the Tribal Council may from time to time establish. The Tribal Council shall, by ordinance, establish a Court of Appeals consistent with the provisions of this Article.

### Section 2. Jurisdiction.

- (a) Tribal Court. The judicial power shall extend to all cases, matters or controversies arising under this Constitution and the laws, ordinances, regulations, customs, and judicial decisions of the Lac Vieux Desert Band and shall be exercised to the fullest extent consistent with self-determination.
- (b) Court of Appeals. The appellate power of the Lac Vieux Desert Judiciary shall be vested in the Court of Appeals which shall have jurisdiction to hear all appeals from the Lac Vieux Desert Tribal Court. Decisions of the Court of Appeals on all matters within its appellate jurisdiction shall be final.

### Section 3. Composition of the Tribal Judiciary.

- (a) Tribal Court. The Tribal Court shall consist of a Chief Judge and at least two (2) associate judges appointed by the Tribal Council.
- (b) Court of Appeals. The composition of the Court of Appeals shall be determined by ordinance of the Tribal Council, Provided That the members of the Tribal Council shall not serve as judges on the Court of Appeals; Provided, Further That no judge or judges serving on the Court of Appeals shall have presided at the trial of the case appealed.

### Section 4. Appointments and Compensation.

- (a) Each judge shall be appointed by an affirmative vote of six (6) of the eight (8) voting members of the Tribal Council for a term of six (6) years.
- (b) The Tribal Council shall have the power to establish the level of compensation for each judge which shall not be diminished during their continuance in office.

Section 5. Eligibility. A person shall be eligible to serve as a Tribal Court Judge only if he or she:

- (a) Is a member of the Lac Vieux Desert Band who has attained the age of twenty-five (25) years or is an attorney licensed to practice before the courts of a state in the United States. and
- (b) Has not been convicted, within ten (10) years of such appointment, of a felony, unless such offense is demonstrated to the satisfaction of the Tribal Council to be related to an assertion of a treaty protected right.

Section 6. Independence of Judicial Branch. The judiciary shall be independent from the legislative and executive functions of the tribal government. No person exercising powers of the executive or legislative branches shall exercise powers properly belonging to the judicial branch.

Section 7. Practice and Procedure. The Tribal Court shall by general rules establish, modify, amend, or simplify the practice and procedure in all courts of the Lac Vieux Desert Band.

Section 8. Removal of a Tribal Judge. Tribal Court Judges shall be subject to removal for reasonable cause by the Tribal Council. The Tribal Council shall by ordinance set forth the procedures for such removal.

Section 9. Vacancies. Any vacancy in the tribal judiciary shall be filled by the Tribal Council in the same manner as the original appointment for the balance of the unexpired term.

## ARTICLE VI — TRIBAL LAW

This Constitution, tribal ordinances, and the customs of the Band shall govern all people subject to the Band's jurisdiction.

## ARTICLE VII — ELECTIONS

### Section 1. First Election.

- (a) For purposes of the first election held pursuant to this Constitution, the Election Board referred to in (b) below shall issue such written rules and regulations as it deems necessary to properly administer the election ordinance adopted by the Tribal Council to conduct the first election ordinance adopted by the Tribal Council to conduct the first election of the Tribal Council, and the Chairperson of the Tribal Council. Such rules and regulations shall be issued within thirty (30) days after the adoption of this Constitution. The first election shall be held to coincide with the expiration of the terms of the Tribal Council Members who are serving at the time of adoption of the Constitution.

- (b) The Tribal Council that is serving at the time of adoption of the Constitution

shall appoint, within five (5) days after adoption of the Constitution, an Election Board as provided in Section 5 of this Article.

- (c) The Tribal Council that is serving at the time of adoption of the Constitution shall adopt an election ordinance governing the conduct of the first election.
- (d) Candidates for the Tribal Council shall be nominated from the floor.
- (e) Tribal Council Members shall continue in office until a successor is elected, their office is deemed vacant, or they are removed from the Tribal Council. The Tribal Council Members serving at the time of adoption of the Constitution shall remain in office until their terms are up and their successors have been elected.
- (f) The Tribal Council serving at the time of adoption of the Constitution shall swear in the newly elected Tribal Council at the first regularly scheduled Tribal Council meeting following the date on which the Election Board certifies the results of the first election.

#### Section 2. Election Methods.

- (a) Regular Election. After the first election, members of the Tribal Council shall be elected during such month and day as set by the Tribal Council. The Council shall set the date as near as possible to coincide with the expiration of its term. Election procedures shall be provided by the Election Board as provided in Section 5 of this Article.
- (b) Special Elections. Special elections shall be called where appropriate by the Election Board to remove, recall and fill vacancies of elected officials and to submit initiatives and referendums to the membership.
- (c) Swearing in of New Council Members. Newly elected members of the Tribal Council shall be sworn into office by the then serving Tribal Council at the next regularly scheduled Tribal Council meeting following the date on which the Election Board certifies the results of the regular or special election at which such members were elected.

#### Section 3. Voting.

- (a) Any enrolled member of the Lac Vieux Desert Band who is eighteen (18) years of age or older on the date of the election in question shall be eligible to vote in tribal elections.
- (b) Voting in tribal elections shall be by secret ballot cast at polls established by the Election Board.
- (c) Absentee voting shall be permitted in accordance with such rules and proce-

dures as shall be established by the Election Board.

#### Section 4. Qualifications for Candidates.

- (a) Age and Residency Requirement. To be eligible to be a candidate for the office of Chairperson or Vice-Chairperson, a person must be a member of the Band who has resided within a fifty (50) mile radius of the Lac Vieux Desert Reservation for at least six (6) months prior to the election, and be at least twenty-five (25) years of age as of the date of the election. To be eligible to be a candidate for other Tribal Council positions, a person must be a member of the Band who has resided within a fifty (50) mile radius of the Reservation for at least six (6) months prior to the election, and be at least eighteen (18) years of age as of the date of the election.
- (b) Disqualification from Candidacy and Rehabilitation. No person shall be eligible to be a candidate for election to the Tribal Council who has been convicted of any felony under Federal, state or tribal law, unless such person has not been convicted or imprisoned for such felony within the preceding ten (10) years or the Tribal Judiciary, in accordance with such rules as it shall establish, certifies that the person in question is rehabilitated.

#### Section 5. Election Board.

- (a) The Tribal Council shall appoint an Election Board, composed of three (3) eligible voters of the Lac Vieux Desert Band to hold elections, certify election results, and settle election disputes other than allegations of impropriety by the Election Board. The decisions of the Election Board shall be final and binding on the Lac Vieux Desert Band.
- (b) The Election Board shall make sure that each candidate meets the requirements set out in Section 4 above.
- (c) Members of the Election Board shall not be eligible to hold or run for any office in the tribal government. If a member of the Election Board wishes to run for a position on the Tribal Council, he/she shall resign from the Election Board, and the Tribal Council shall appoint a replacement.
- (d) Term of Office. The term of office for the Election Board shall be three (3) years.
- (e) Allegations of impropriety by the Election Board shall be settled by the Tribal Judiciary.
- (f) The Election Board may be authorized in accordance with election ordinances adopted by the Tribal Council to issue such rules and procedures as may be necessary to carry out the election of officers pursuant to this Constitution and the directives of the Tribal Council regarding tribal election business.

- (g) Any candidate for tribal office may choose a representative to be present when the election ballots are counted by the Election Board.
- (h) A Band member shall have five (5) business days from the date of the election to file an election challenge with the Election Board.
- (i) The Election Board shall render its conclusions regarding election disputes within ten (10) days of the date of any election challenge.

## ARTICLE VIII — RECALL, REMOVAL AND VACANCY

### Section 1. Recall: Dismissal from Office by Voters of the Tribe.

- (a) Ordinances shall be enacted by the Tribal Council to provide for the recall of any elected official of the Lac Vieux Desert Band at any time after holding office for six (6) months upon a petition signed by electors equal in number to fifty-one percent (51%) of the number of persons eligible to vote in the preceding tribal election; Provided, That every official shall be subject to only one (1) recall petition per term, and shall not be subject to recall during the final year of his/her term.
- (b) Recall petitions shall be submitted to the Election Board.
- (c) The Election Board shall determine whether the petition meets the requirements specified in (a) above within ten (10) business days of its receipt.
- (d) A recall election shall be scheduled by the Election Board within thirty (30) days of its determination that the petition meets the requirements specified in (a) above.
- (e) The elected official shall be removed by a majority vote of those casting ballots in the recall election; Provided, That at least fifty-one percent (51%) of the eligible voters vote in the recall election.

### Section 2. Removal: Dismissal from Office Initiated by the Tribal Council. The Tribal Council may by an affirmative vote of seven (7) of the eight (8) voting members of the Council refer to the Tribal Judiciary of the Lac Vieux Desert Band for removal from office any member of the Tribal Council for any of the following reasons:

- (a) Failure to attend three (3) consecutive meetings without a valid excuse, including regular, emergency, and special meetings; Provided, That the member has received notice of the meetings.
- (b) Gross misconduct in office;
- (c) Incapacity from physical or mental disability, to the extent that he/she is inca-

pable of exercising judgement about or attending to the business of the Tribal Council.

- (d) Conviction of a crime under Federal, state or tribal law while holding office.

### Section 3. Vacancies.

- (a) The office of any elected tribal official who dies, resigns, is recalled or is removed, shall be deemed to be vacant. Resignation of office shall be written and shall be deemed to be effective as of the date tendered unless otherwise stated in the resignation document.

- (b) Any vacancy in the office of an elected tribal official shall be filled as follows:

1. Council Members. When a Tribal Council position, other than Chairperson, is vacant, the position shall be filled for the remainder of the term by the person who was the highest runner-up in the previous election for Tribal Council. If such person is not available, then the position shall be filled by the person who received the next highest number of votes in the previous election for Tribal Council. In the event there are no runners-up from the previous election available to fill a vacancy, a special election shall be called to fill the position.
2. Vice-Chairperson, Secretary or Treasurer. If the office of Vice-Chairperson, Secretary or Treasurer is vacant, the tribal Chairperson shall appoint a Council member to fill such position for the remainder of the term. The council position shall then be filled as provided for in subsection one (1) above.
3. Chairperson. If the office of Chairperson is vacant, the Tribal Election Board shall hold a special election within thirty (30) days to fill the vacant office; Provided, That any special election to fill an office vacated as a result of recall proceedings, in accordance with Section 1 of this Article, shall be held separate from the recall election.
4. Acting Tribal Chairperson Pending Special Election. If the office of Chairperson is vacant, the Vice-Chairperson shall act as Chairperson until the position has been filled by special election. If the offices of Chairperson and Vice-Chairperson are both vacant, the Secretary shall act as Chairperson until the position has been filled by special election. If the offices of Chairperson, Vice-Chairperson, and Secretary are all vacant, the Treasurer shall act as Chairperson until the position has been filled by special election.
5. Any tribal member taking office under the provision of this section shall be deemed to be subject to all provisions of this Constitution and to tribal ordinances and resolutions generally applicable to elected officials and to

their particular office.

- (c) Any special election required to be held under this Article shall be conducted in accordance with applicable provisions of this Constitution and with any applicable tribal ordinances. If a regular election is scheduled to be held within ninety (90) days all issues shall be submitted to a vote at the regular election.
- (d) If by reason of vacancies in office the remaining members of the Tribal Council number less than five (5) members, the Election Board shall cause all vacant offices to be filled by special election held in accordance with applicable provisions of this Constitution.

#### ARTICLE IX - INITIATIVE AND REFERENDUM

##### Section 1. Initiative.

- (a) The members of the Band shall have the power to propose by initiative any ordinance to the Tribal Council or to repeal or amend any ordinance in accordance with the provisions of this Article; Provided, That ordinances making appropriations for the tribal institutions or ordinances establishing the tribal budget shall be exempt from the initiative process.

- (b) The procedure for initiative shall be as follows:

1. Initiative petitions must be signed by at least twenty-five percent (25%) of the eligible voters of the Band after the signatures have been verified by the Election Board, the initiative and the verified petition shall be presented to the Tribal Council.
2. The election on the initiative shall be held not less than thirty (30) days and not later than sixty (60) days from the date the initiative and the verified petition are filed with Tribal Council.
3. In the event the Tribal Council fails to call an election on the initiative, it shall be submitted to the voters by the Election Board for the voters' acceptance or rejection. The Tribal Council may propose a different law upon the same subject and in such event both proposals shall be submitted to the eligible voters at the same time.
4. The vote of a majority of those actually voting shall be conclusive and binding upon the Tribal Council; Provided, That at least fifty-one percent (51%) of the eligible voters of the Band cast ballots in said special election.

##### Section 2. Referendum.

- (a) The Tribal Council shall upon the vote of six (6), or two-thirds (2/3) of the

current Council Members, submit any proposed or previously enacted ordinance to a vote at a referendum election.

- (b) The procedure for a referendum election shall be as follows:

1. Referendum elections shall be held not less than thirty (30) days and not later than sixty (60) days from the date the proposed or existing ordinance is referred to the voters by the vote of the Tribal Council as provided for in this subsection.
2. The vote of a majority of those actually voting shall be conclusive and binding upon the Tribal Council, Provided, That at least fifty-one percent (51%) of the eligible voters of the Band cast ballots in a referendum election.

Section 3. Time for Taking Effect: Amendment or Repeal. Any initiative or referendum approved pursuant to the provisions of this Article shall take effect ten (10) days after certification of the election. No law adopted by the membership of the Band under the initiative provisions shall be amended or repealed, except by a vote of the electors unless otherwise provided in the initiative proposal.

#### ARTICLE X — CONSTITUTIONAL RIGHTS

Section 1. Civil Rights of Members. The Lac Vieux Desert Band in exercising the powers of self-government shall not:

- (a) Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or of the right of the people peaceably to assemble and to petition for a redress of grievances;
- (b) Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;
- (c) Subject any person for the same offense to be twice put in jeopardy;
- (d) Compel any person in any criminal case to be a witness against himself;
- (e) Take any private property for a public use without just compensation;
- (f) Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(g) Require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one (1) year or a fine of five thousand dollars (\$5,000.00), or both, or the maximum penalty allowed under Federal law;

(h) Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(i) Pass any bill of attainder or ex post facto law; or

(j) Deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

Section 2. Treaty Rights and the Development of Tribal Resources. Members of the Lac Vieux Desert Band shall have the right to fish, hunt, trap, and gather food from plants subject to reasonable restrictions established by the Tribal Council for protection of the resources; Provided, That this section does not include the right to commercially develop tribal resources, such right being reserved to the Band; Provided, Further That that Band may license members to commercially develop the resources of the Lac Vieux Desert Band, to the extent permitted by Federal law.

#### ARTICLE XI — TRIBAL LAND

Section 1. Transfer of Tribal Land. Except for conveyances of land to the United States in trust for the Band, the Tribal Council shall not transfer land out of tribal ownership unless, prior to such transfer taking effect, such proposed transfer is approved by a majority vote in an election in which at least two-thirds (2/3) of the eligible voters of the Band cast their ballots, including absentee ballots.

Section 2. Encumbrances of Tribal Land. The Tribal Council may authorize only the following transfers or encumbrances of tribal land without submitting the proposed encumbrances for approval or rejection to the eligible voters of the Band:

(a) Tribal development of the land for residential, agricultural, commercial or industrial purposes;

(b) Land use assignments for residential or agricultural purposes; and

(c) Leases for residential, agricultural, commercial or industrial purposes as provided by Federal law.

Section 3. Land Use Plans. The Tribal Council shall by ordinance establish a comprehensive land use and natural resources conservation plan for lands and natural resources subject to tribal jurisdiction.

Section 4. Article Construction. This Article shall not be construed to deny the Tribal Council its power and authority to regulate activities on tribal land.

#### ARTICLE XII — CONFLICT OF INTEREST

In carrying out the duties of tribal office, no tribal official, elected or appointed, shall make or participate in making decisions which involve balancing a substantial personal financial interest, other than interests held in common by all tribal members, against the best interests of the Band.

#### ARTICLE XIII — SOVEREIGN IMMUNITY

Section 1. General Prohibition. The Tribal Council shall not waive or limit the right of the Lac Vieux Desert Band to be immune from suit, except as authorized by this Article or in furtherance of tribal business enterprises.

Section. 2. Suits Against the Lac Vieux Desert Band in Tribal Courts by Tribal Members.

(a) The Lac Vieux Desert Band shall be subject to suit in the Tribal Court by tribal members for the purpose of enforcing rights and duties established by this Constitution and by the ordinances of the Tribe.

(b) Tribal members shall not be entitled to an award of damages as a form of relief against the Lac Vieux Desert Band; Provided, That the Tribal Council may by ordinance or resolution waive the right of the Lac Vieux Desert Band to be immune from damages in such suits in specified instances when such waiver would promote the best interests of the Band or the interests of justice.

(c) If the tribal member bringing the suite prevails on the merits in the Tribal Court, the costs of bringing the suit may be charged to the Band, if so ordered by the Tribal Court. The Band, however, does not waive or limit any rights which it may have to be immune from suit in the courts of the United States or of any state.

#### ARTICLE XIV — SEVERABILITY

If for any reason any provision of this Constitution shall be held to be invalid or unconstitutional, the validity and effect of all other provisions shall not be affected thereby.



#### ARTICLE XV — AMENDMENTS

This Constitution may be amended by a majority vote of the qualified voters of the Band at an election called for that purpose by the Secretary of the Interior in which at least seventy-five percent (75%) of the qualified voters participate in such election, but no amendment shall become effective until approved by the Secretary of the Interior. The Secretary shall approve the amendments if adopted by a majority of the tribal voters unless the Secretary finds that the proposed amendments, or any portion thereof, is contrary to Federal law.

Amendments to this Constitution may be proposed either by the Tribal Council or petition of the eligible voters of the Band. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment upon receipt of a valid petition signed by at least one-third (1/3) of the eligible voters of the Band, or by resolution of the Tribal Council.

#### ARTICLE XVI — ADOPTION

This Constitution, when adopted by a majority vote of the qualified voters of the Lac Vieux Desert Band voting at an election called for that purpose by the Secretary of the Interior and conducted in accordance with Federal regulations in which at least thirty percent (30%) of the qualified voters shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be effective from the date of such approval as provided in the Indian Reorganization Act of 1934 (48 Stat. 984), as amended.

#### CERTIFICATE OF RESULTS OF ELECTION

Pursuant to an order issued on February 11, 1982, by Denise Homer, Acting Director, Office of Tribal Services, the Constitution of the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan was submitted to the qualified voters of the lac Vieux Desert Band and on May 14, 1992, was duly adopted by a vote of 38 for, and 2 against, and 0 cast ballots found spoiled or mutilated, in an election in which at least thirty percent (30%) of the 62 members entitled to vote, cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended.

Chairman, Election Board

*Anne E. Bolton*

Election Board Member

*Verian Akley*

Election Board Member

*Judy A. The Goshute*

Election Board Member

*Grace Jackson*

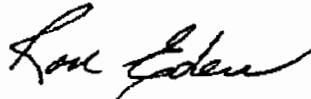
Election Board Member

*Rena Curtiss*

Date: May 14, 1992

### CERTIFICATE OF APPROVAL

I, Ron Eden, Director, Office of Tribal Services, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me by 230 D.M. 2.4, do hereby approve the Constitution of the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan. This Constitution is effective as of this date; PROVIDED, That nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal law.



Director, Office of Tribal Services

Washington D.C.

Date:

### CERTIFICATE OF RESULTS OF ELECTION

Pursuant to a Secretarial Election authorized by delegated authority to the Acting Area Director, Minneapolis Area Office, Bureau of Indian Affairs, on February 6, 1997, the attached Proposed Amendment i, to the Constitution of the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan, was submitted to the qualified voters of the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan, and on May 6, 1997 was duly adopted/rejected by a vote of 68 (number) for, 1 (number) against, and 0 (number) cast ballots found spoiled or mutilated, in an election in which at least 75% of the 87 (number) entitled to vote cast their ballots in accordance with Section 18 of the Indian Reorganization Act of June 01, 1934, (48 Stat. 984), as amended, and under the rules and regulations as the Secretary of the Interior has prescribed.

  
Chairman, Election Board Member

  
Election Board Member

  
Election Board Member

  
Election Board Member-Chairman

Date: 5-6-97

PROPOSED AMENDMENT I

CONSTITUTION  
OF THE  
LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS  
OF MICHIGAN

Proposed Amendment I

Section 1(a) and 1(b) of Article II - Membership shall be amended to read as follows:

Section 1. Membership. The membership of the Lac Vieux Desert Band shall consist of:

- (a) All persons whose names are listed on the approved Membership Roll of the Lac Vieux Desert Band dated August 15, 1990 or whose name appeared on the Tribal Membership Roll as maintained by the Band in 1986 and was on file with the Bureau of Indian Affairs as of that date.
- (b) Descendants of persons whose names are listed on the approved Base Membership Roll of the Band dated August 15, 1990 or whose name appeared on the Tribal Membership Roll as maintained by the Band in 1986 and was on file with the Bureau of Indian Affairs as of that date.

Numerical Designation

Having been duly adopted and approved, Proposed Amendment I, is hereby designated as Amendment No. 1, to the Constitution of the Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan.

# **EXHIBIT D**

# Lac Vieux Desert Band Of Lake Superior Chippewa Tribal Government

P.O. Box 249, Pow Wow Trail • Watersmeet, Michigan 49969

Phone: 906-358-4577 • Fax: 906-358-4785

## *Executive Officers:*

James Williams Jr., Tribal Chairman  
Joette Pete-Baldwin, Tribal Vice-Chairwoman  
Misaabe McGeshick, Treasurer  
Michelle Hazen, Secretary



## *Council Members:*

Roberta Ivey  
Shasta Klingman  
giiwegiizhigookway Martin  
Tyrone McGeshick  
Tracy Pete

## **LAC VIUEX DESERT EMERGENCY TRIBAL COUNCIL MEETING September 3, 2010**

**CHAIRMAN WILLIAMS CALL THE MEETING TO ORDER AT 9:53 A.M.**

**ROLL CALL:** James Williams Jr.  
Joette Pete-Baldwin (absent)  
Michelle Hazen  
Misaabe McGeshick  
Tyrone McGeshick  
Tracy Pete  
Shasta Klingman  
Giiwegiizhigookway Martin  
Roberta Ivey

**GUESTS:** Zeke Fletch (conference call)

**COMMUNITY MEMBERS PRESENT:** None

## **APPROVAL OF AGENDA:**

Motion to approve the agenda, by Tracy Pete, 2<sup>nd</sup> by Roberta Ivey  
All in favor 5, Opposed 0, Abstaining 0  
Motion Carried

**OLD BUSINESS:** None

## **Selection of Appellate Judge:**

Discussion regarding Wilson Brot from the Grand Traverse Bay Area. Zeke will work on the contract.

What happened with the list of other judges?

Motion to approve the appellate Judge Wilson Brot by Shasta Klingman, 2<sup>nd</sup> by Tracy Pete

All in Favor 7 Opposed 0, Abstaining 0

Motion Carried

**Swearing in date ordered by the Judge Sept 7<sup>th</sup> meeting is scheduled for Sept 14<sup>th</sup>:**

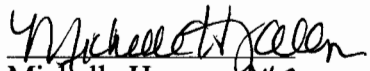
The meeting is not scheduled until Sept 14<sup>th</sup>. We will wait until then to follow court order.

**ADJOURN:**

Motion to adjourn at 10:08 a.m. by Tracy Pete, 2<sup>nd</sup> by Misabbe McGeshick

All in Favor 7, Opposed 0, Abstaining 0

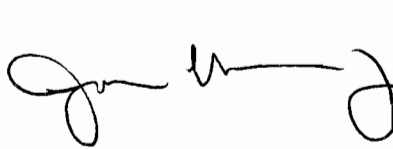
Motion Carried

  
Michelle Hazen

9-10-10  
Date

9/10/10

Date of Approval by Tribal Council

 9/10/10

# **EXHIBIT E**



**IN THE COURT OF APPEALS  
FOR THE  
LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS**

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THE LAC VIEUX DESERT BAND OF LAKE  
SUPERIOR CHIPPEWA INDIANS TRIBAL  
COUNCIL, and the MEMBERS OF THE TRIBAL  
COUNCL, JAMES H. WILLIAMS JR.,  
JOETTE PETE-BALDWIN, MICHELLE HAZEN  
ALLEN, MISAABE MCGESHICK,  
TRACY R. PETE, GIIWEGIIZHIGOOKWAY  
MARTIN, ROBERTA L. IVEY, TRYONE  
MCGESHICK, and SHASTA KLINGMAN,  
Each an individual citizen of the Lac Vieux  
Desert Band, a federally-recognized Indian  
Tribe,

Case No. \_\_\_\_\_

Hon. Wilson D. Brott

Petitioners,

v.

THE LAC VIEUX DESERT BAND  
TRIBAL POLICE, and  
THE IRON COUNTY SHERIFF'S  
DEPARTMENT,

Respondents.

**ORDER GRANTING EX PARTE PETITION FOR HABEUS CORPUS**

This matter has come before the Court on the Petitioners' *Emergency Ex Parte Petition for Writ of Habeas Corpus*. The Court has reviewed the Petition and the facts alleged within it. Further this Court *previously issued* an Order Granting Stay and for Release of Tribal Council Members, dated September 9, 2010 and delivered to the Court Clerk on September 9, 2010 (attached hereto) in the related matter of *Pete, et al v. LVD Tribal Council, et al*, Case Nos. 10-CV-79 through 82. Based upon the Petition and this Court's prior rulings, the Court finds that there is good cause to grant the Petition for immediate release of the Petitioners.

**IT IS THEREFORE ORDERED** that the members of the Tribal Council as individuals and citizens of a federally recognized Indian Tribe, listed as:

JAMES H. WILLIAMS (2-26-1968)  
JOETTE PETE-BALDWIN (7-7-1971)  
MICHELLE HAZEN ALLEN (2-10-1973)

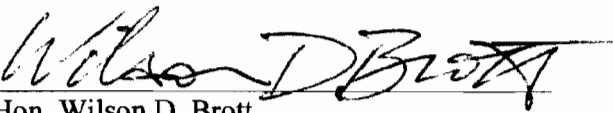
MISAABE MCGESHICK (2-9-1975)  
TRACY R. PETE (6-19-1972)  
GIIWEGIIZHIGOOKWAY MARTIN (6-12-1949)  
ROBERTA L. IVEY (11-10-1968)  
TYRONE MCGESHICK (2-11-1969)  
SHASTA KLINGMAN (6-11-1976)

shall be immediately released from incarceration in the Iron County Jail Complex or any other detention center, correctional facility, whether tribal, state or federal.

**IT IS FURTHER ORDERED** that the LVD Tribal Police is directed to contact the Iron County Sheriff's Department to grant the release of the Petitioners.

**IT IS FURTHER ORDERED** that this order shall remain in effect until further order of this Court.

Dated: 9/11/10 3:19 p.m.

  
Hon. Wilson D. Brott  
Appellate Judge

# **EXHIBIT F**

**IN THE COURT OF APPEALS  
FOR THE  
LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS**

---

PATRICIA A. PETE,

Plaintiff-Appellee,

Case Nos. 10-CV-79 through 82

v.

Hon. Wilson D. Brott

LAC VIEUX DESERT BAND OF LAKE SUPERIOR  
CHIPPEWA INDIANS TRIBAL COUNCIL and  
CYTHIA WEBB, ROXANNE McGESHICK,  
HELEN SMITH, 2010 LVD ELECTION BOARD,

Defendants-Appellants

---

GIIWEGHIIZHIGOOKWAY MARTIN,

Plaintiff- Appellee,

v.

LAC VIEUX DESERT BAND OF LAKE SUPERIOR  
CHIPPEWA INDIANS ELECTION BOARD,

Defendant-Appellant

---

JOETTE PETE-BALDWIN,

Plaintiff-Appellee,

v.

LAC VIEUX DESERT BAND OF LAKE SUPERIOR  
CHIPPEWA INDIANS ELECTION BOARD,

Defendant-Appellant

---

JAMES WILLIAMS, JR., individually and in his  
official capacity,

Plaintiff-Appellee

v.

CYTHIA WEBB, ROXANNE McGESHICK,  
and HELEN SMITH, individually and in their  
official election capacities,

Defendants-Appellants

---

TRACY R. PETE,

Plaintiff-Appellee,

v.

LAC VIEUX DESERT BAND OF LAKE SUPERIOR  
CHIPPEWA INDIANS ELECTION BOARD,

Defendant-Appellant

---

**ORDER GRANTING STAY AND FOR RELEASE OF TRIBAL COUNCIL MEMBERS**

The Court of Appeals has received an Emergency Application for Stay of Execution of the Opinion and Order Pending Appeal and Notice of Emergency Appeal in the above-captioned matter dated September 8, 2010 filed by Appellant Tribal Council, and an Emergency Application for Stay of Execution filed by Appellant James William, Jr. in this matter on the same date.

The Tribal Court has issued three orders of relevance to the emergency applications, being the Tribal Court's Opinion dated August 19, 2010; the Court Order Regarding Plaintiff's Motion For Stay of Execution, Defendant's Motion to Establish Procedural Guidelines, and Chairman Elect Shively's Motion to Enforce the Court Order, dated August 27, 2010; and the Order Denying Stay of Execution and Order Pending Appeal, dated September 8, 2010.

The Court of Appeals has not received a copy of the September 8, 2010 Order Denying Stay of Execution and Order Pending Appeal issued by the Tribal Court below, but both counsel

for the Tribal Council and for James William, Jr. have indicated in their pleadings that the Tribal Court, Hon. Bradley Dakota presiding, issued an Execution of Judgment and Order which also provided that each Tribal Council member was found to be in contempt of court for failure to comply with the Tribal Court's August 27, 2010 order, and further ordered the arrest of each Tribal Council member. The parties further indicate that said Order requires that the Tribal Council members be held in custody and fined \$250/day (each) until a majority of the Tribal Council pass a resolution to immediately swear in the Tribal Council officers who were duly elected. The order does not address how the Tribal Council is to conduct business while its members remain incarcerated.

Further, both parties allege that the orders issued by the Tribal Court are inconsistent as the Tribal Court's Opinion dated August 19, 2010 required action by the Tribal Council at its regular meeting (which occurs on the second Tuesday of the month), but the subsequent Court Order Regarding Plaintiff's Motion For Stay of Execution, Defendant's Motion to Establish Procedural Guidelines, and Chairman Elect Shively's Motion to Enforce the Court Order, dated August 27, 2010 states that such action should occur on September 7, 2010, which is the first Tuesday of the month.

Both parties further allege that the Tribal Court improperly ordered that the Tribal Council members be incarcerated indefinitely for contempt and that the Court violated their Constitutional due process rights and their rights under the Indian Civil Rights Act, 25 U.S.C. §§ 1301, et seq., by ordering their incarceration without first conducting a hearing concerning whether the contempt occurred, and what remedy should be imposed should contempt be found.

#### STAY OF PROCEEDINGS

An appellate court's power to hold an order in abeyance while it assesses the legality of the order has been described as "inherent." *Nken v. Holder*, \_\_\_ U.S. \_\_\_, 129 S.Ct. 1749, 1756, 173 L.Ed.2d 550 (2009) . The authority to hold an order in abeyance pending review allows an appellate court to act responsibly. A reviewing court must bring considered judgment to bear on the matter before it, but that cannot always be done quickly enough to afford relief to the party aggrieved by the order under review. The choice for a reviewing court should not be between justice on the fly or participation in what may be an "idle ceremony." *Nken, supra*, 129 S.Ct. at 1757, citing *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 9, 62 S.Ct. 875, 86 L.Ed. 1229 (1942). The ability to grant interim relief is accordingly not simply "[a]n historic procedure for preserving rights during the pendency of an appeal," *Scripps-Howard, supra*, at 15, 62 S.Ct. 875, but also a means of ensuring that appellate courts can responsibly fulfill their role in the judicial process.

At the same time, a reviewing court may not resolve a conflict between considered review and effective relief by reflexively holding a final order in abeyance pending review. A stay is an "intrusion into the ordinary processes of administration and judicial review," *Virginia Petroleum Jobbers Assn. v. Federal Power Comm'n*, 259 F.2d 921, 925 (C.A.D.C.1958) (*per curiam*), and accordingly "is not a matter of right, even if irreparable injury might otherwise result to the appellant," *Virginian R. Co. v. United States*, 272 U.S. 658, 672, 47 S.Ct., 222, 71



L.Ed. 463 (1926). The parties and the public, while entitled to both careful review and a meaningful decision, are also generally entitled to the prompt execution of orders that have been made final. *Nken, supra*, 129 S.Ct at 1757.

Instead of directing the conduct of a particular actor, a stay operates upon the judicial proceeding itself. It does so either by halting or postponing some portion of the proceeding, or by temporarily divesting an order of enforceability. See Black's, *supra*, at 1413 (6<sup>th</sup> ed.1990) (defining "stay" as "a suspension of the case or some designated proceedings within it"). *Nken, supra*, 129 S.Ct at 1757.

The traditional stay factors contemplate individualized judgments in each case". *Id.*, at 1760-61. The party requesting a stay bears the burden of showing that the circumstances justify an exercise of that discretion. *Id.*, at 1761. The Court generally considers four factors when evaluating a motion to stay "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.*

Weighing the above factors without much information is difficult, at best. This Court has limited information before it at this time. This Court was not present during the proceedings below, and has not had an opportunity to fully review those proceedings. However, given what the Court has been apprised of in the filings so far, the Tribal Court's action of incarcerating each of the Tribal Council members without a hearing appears at this time to be a harsh means of enforcing the Court's order, and self-perpetuating in that it would seem impossible for the Tribal Council to obtain a quorum to conduct any sort of business while incarcerated. Therefore, based upon what has been presented at this point, the Court is convinced that a stay should be issued at least until the Court has had the opportunity to hear from all parties to this action as to whether a stay should continue.

#### CONTEMPT OF COURT

While Courts have many options available to it to enforce its orders, it must also ensure that parties are given notice and an opportunity to be heard, particularly when it is considering allegations of contempt which have occurred outside the presence of the Court. Whether criminal or civil contempt, in all cases of indirect contempt (i.e. contempt that does not occur in the Court's immediate view and presence), proper notice of the contempt charges, a reasonable opportunity to prepare a defense or explanation, and the opportunity to testify and call witnesses are basic procedural due process requirements. See *In re Contempt of Robertson (Davilla v Fischer Corp)*, 209 Mich. App. 433, 438 (1995). Such contempt should not be punished summarily (i.e., without a hearing), but only after proof of the facts charged has been made by affidavit or other method and opportunity has been given to defend. It appears that no notice or opportunity to defend was given to the Tribal Council members of their potential incarceration in this case for contempt of court prior to the order being issued for their incarceration. Therefore, given the limited evidence before the Court at this time, this Court will order that the contempt



sanctions be lifted pending a hearing to determine whether a stay of the orders issued by the Tribal Court should continue.

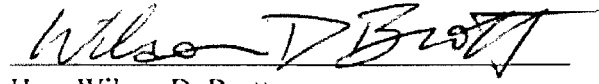
#### CONCLUSION

For the reasons stated above, given the limited information provided to the Court at this time, the Court believes a stay should be issued pending the receipt of more information at a hearing to be scheduled by the Court of Appeals. Further, as the incarceration of the Tribal Council members occurred without a hearing and without any opportunity to be heard, the request for a stay of the September 8, 2010 order is further granted, and any Tribal Councilors currently in custody shall be released immediately.

#### THEREFORE, IT IS HEREBY ORDERED:

1. That enforcement of the Tribal Court's Opinion dated August 19, 2010, the Court Order Regarding Plaintiff's Motion For Stay of Execution, Defendant's Motion to Establish Procedural Guidelines, and Chairman Elect Shively's Motion to Enforce the Court Order, dated August 27, 2010, and the Order Denying Stay of Execution and Order Pending Appeal, dated September 8, 2010, are each stayed pending a hearing before this Court as to whether the stay should continue.
2. That any bench warrants issued pursuant to Order Denying Stay of Execution and Order Pending Appeal, dated September 8, 2010, shall be immediately recalled, and each Tribal Council member of the Lac Vieux Desert Band of Lake Superior Chippewa Indians who has been incarcerated pursuant to said order or any bench warrants issued therefrom, shall be immediately released from custody, whether they are being held at the Iron County Jail Complex or any other jail or prison facility, said Tribal Council members being:
  - a. James H. Williams, Jr. (2-26-1968)
  - b. Joette Pete-Baldwin (7-7-1971)
  - c. Michelle Hazen Allen (2-10-1973)
  - d. Misaabe McGeshick (2-9-1975)
  - e. Tracy R. Pete (6-19-1972)
  - f. Giiwegiizhigookway Martin (6-12-1949)
  - g. Reberta L. Ivey (11-10-1968)
  - h. Tyrone McGeshick (2-11-1969)
  - i. Shasta Klingman (6-11-1976)
3. That this matter shall be set for a hearing before the Court of Appeals as to whether or not the stay issued in this matter should be continued. Notice of that hearing will be provided to the parties by the Court and will be scheduled as soon as reasonably possible.

Dated: 9/9/10



Hon. Wilson D. Brott  
Appellate Judge