UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

Saginaw Chippewa Indian Tribe of Michigan, et al.,

Plaintiffs,

v.

Jennifer Granholm, et al.,

Defendants.

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

Joint Motion to Enter Order for Judgment Upon Completion of a Public Comment Period and Opportunity For the Parties To Respond

---

The Saginaw Chippewa Indian Tribe of Michigan, City of Mt. Pleasant, Isabella County, State of Michigan, Defendant Granholm, and Defendant Rising (together with the United States, the "Settling Parties") jointly submit this motion respectfully requesting the Court to approve and enter the proposed Order for Judgment that was negotiated and approved by the Settling Parties. The law favors voluntary settlement of disputes, and the proposed Order for Judgment and accompanying agreements are the product of over 20 months of negotiations between the parties, and are fair, adequate, and reasonable, and consistent with the public interest.[1] As part of the settlement, the parties agreed to ask the Court to allow a public-comment period before entry of the judgment. The Saginaw Chippewa Indian Tribe of Michigan, City of Mt. Pleasant, Isabella County, State of Michigan, Defendant Granholm, and Defendant Rising each join this motion, and the United States concurs in the motion, but Defendant Cox does not. A supporting memorandum and exhibits are filed with this motion,

---

[1] *United States v. Lexington-Fayette Urban County Government*, 591 F.3d 484, 489 (6th Cir. 2010).

and the Saginaw Chippewa Indian Tribe of Michigan, City of Mt. Pleasant, Isabella County, State of Michigan, Defendant Granholm, and Defendant Rising respectfully request expedited decision of this motion.

WHEREFORE, the Saginaw Chippewa Indian Tribe of Michigan respectfully requests that this Court grant its motion to enter the proposed Order for Judgment after allowing a public-comment period and an opportunity for the parties to respond to those comments.

Dated: November 9, 2010

SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN

s/ William A. Szotkowksi

William A. Szotkowski (MN #161937)
Vanya S. Hogen (MN # 23879X)
Jessica S. Intermill (MN #0346287)
Sara K. Van Norman (MN #0339568)
Jacobson, Buffalo, Magnuson, Anderson & Hogen, P.C.
1360 Energy Park Drive, Suite 210
St. Paul, Minnesota 55108
Tele: (651) 644-4710
Fax: (651) 644-5904
E-mail: bszot@jacobsonbuffalo.com
vhogen@jacobsonbuffalo.com
jintermill@jacobsonbuffalo.com
svannorman@jacobsonbuffalo.com

Sean J. Reed (MI #P62026)
General Counsel, SCIT
7070 East Broadway
Mt. Pleasant, Michigan
Tele: (989) 775-4032
Fax: (989) 773-4614
E-mail: Sean.Reed@verizon.net

Dated: November 9, 2010.

STATE OF MICHIGAN, DEFENDANT GRANHOLM, and DEFENDANT RISING

s/ with consent of Todd Adams
Todd B. Adams (P36819)
Loretta S. Crum (P68297)
Michigan Attorney General
Environment, Natural Resources, and Agriculture Div.
525 West Ottawa St., Fl. 6
Lansing, MI 48909
Tele: (517) 373-7540
E-mail: adamstb@michigan.gov

CITY OF MT. PLEASANT

s/ with consent of Scott Smith
Scott G. Smith (P31966)
Clark Hill P.L.C.
200 Ottawa Ave NW, Suite 500
Grand Rapids, MI 49503
Tele: (989) 773-9961
E-mail: SGSmith@ClarkHill.com

COUNTY OF ISABELLA

s/ with consent of Larry Burdick
Larry J. Burdick (P31930)
Risa Scully (P58239)
200 N. Main St.
Mt. Pleasant, MI 48858
Tele: (989) 772-0911 x 311
E-mail: lburdick@isabellacounty.org

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

Saginaw Chippewa Indian Tribe of Michigan, et al.,

Plaintiffs,

v.

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

Jennifer Granholm, et al.,

Defendants,

Memorandum in Support of Joint Motion to Enter Order for Judgment Upon Completion of a Public Comment Period and Opportunity For the Parties To Respond

---

CONCISE STATEMENT OF ISSUE PRESENTED

The sovereign parties to this case have negotiated a fair, adequate, and reasonable settlement that is in the public's interest. Should the Court exercise its broad discretion to enter these parties' proposed Order for Judgment?

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Standard for Entry of Consent Decree

United States v. Lexington-Fayette Urban County Government, 591 F.3d 484 (6th Cir. 2010).

The United States, Saginaw Chippewa Indian Tribe of Michigan, City of Mt. Pleasant, Isabella County, State of Michigan, Defendant Granholm, and Defendant Rising (collectively, the "Settling Parties") have reached a negotiated settlement that resolves all disputes between them in this case. They have negotiated a proposed Order for Judgment (attached to this motion as Exhibit 1) that recognizes the boundaries of the Isabella Reservation. They also have negotiated 12 separate intergovernmental agreements (attached as Exhibits A – M to the Order for Judgment) governing issues of mutual concern and the allocation of jurisdiction within the Isabella Reservation. The intergovernmental agreements would become effective upon the Court's entry of the proposed Order, but they will be governed by their own terms. In accordance with Local Rule 40.2, the movants recognize the need to inform the Court of this settlement, and respectfully request that the Court to enter the parties' proposed Order for Judgment as being fair, adequate, and reasonable, and consistent with the public interest.[1]

A. The Court has broad discretion to enter the proposed Order for Judgment.

Courts have long favored voluntary settlement of actions. As the Sixth Circuit has recognized in the context of class-action settlements, "[v]oluntary compliance will frequently contribute to the ultimate achievement of the public objectives. Consent decrees minimize the delay, expense, psychological bitterness, and adverse publicity which frequently accompanies adjudicated guilt."[2] The Supreme Court has explained:

> Consent decrees are entered into by parties to a case after careful negotiation has produced agreement on their precise terms. The parties waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and elimination of

[1] *United States v. Lexington-Fayette Urban County Government*, 591 F.3d 484, 489 (6th Cir. 2010).
[2] *Williams v. Vukovich*, 720 F.2d 909, 923 (6th Cir. 1983).

> risk, the parties each give up something they might have won had they proceeded with the litigation.[3]

The law strongly favors and encourages such settlements, particularly in complex intergovernmental cases where "voluntary compliance by the parties over an extended period" is in the public interest and conserves judicial resources.[4] In the Sixth Circuit, "[t]he criteria to be applied when a district court decides whether to approve and enter a proposed consent decree, are whether the decree is "'fair, adequate, and reasonable, as well as consistent with the public interest.'" [5]

District courts' decisions approving settlements are reviewed under a deferential abuse-of-discretion standard,[6] and have been upheld even where the settlement impacts non-parties and non-consenting parties.[7] Courts across the country have applied this same standard in Indian-

---

[3] *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971).

[4] *Metro. Housing Dev. Corp. v. Village of Arlington Heights*, 616 F.2d 1006, 1013-14 (7th Cir. 1980).

[5] *Lexington-Fayette*, 591 F.3d at 489 (citing cases, internal quotation omitted).

[6] *E.g. United States v. County of Muskegon*, 298 F.3d 569, 581 (6th Cir. 2002).

[7] Though parties to a partial settlement typically may not bind unrelated third parties who do not consent to the settlement, *Local Number 93, Int'l Assoc. of Firefighters, AFL-CIO C.L.C. v. City of Cleveland*, 478 U.S. 501, 529 (1986), their actions may well affect nonsettling parties, and can bind those parties under certain circumstances, particularly if they are in privity. *E.g. IPSCO Steel, Inc. v. Blaine Construction Corp.*, 371 F.3d 141,149-50 (3rd Cir. 2004) (affirming entry of settlement of all claims over the objection of plaintiff project manager where consenting co-plaintiff project owner was the real party in interest); *County of Muskegon*, 298 F.3d at 581 (affirming approval of consent decree between United States and County over objection of defendant companies who had contracts with the County, even though the contracts were affected under the settlement); *Metro. Housing Dev. Corp.*, 616 F.2d at 1013-14 (applying abuse-of-discretion standard and affirming district court's entry of Fair Housing Act consent decree resolving "[t]he often diverse interests of national policy and local zoning" over objection of village and local property owners). *Accord Armstrong v. Adams*, 869 F.2d 410, 414 (8th Cir. 1989) (affirming voluntary dismissal of non-consenting defendants under Rule 41(a) before entry of settlement and holding that "the district occur correctly . . . determine that after they had been dismissed as defendants the appellants had no standing to object to the settlement.").

treaty-rights cases.[8] While settlements are the product of compromise, and often "[n]either litigant obtained all that they had hoped to gain initially through litigation[,]"[9] they also present the parties with the opportunity to bargain for outcomes that litigation could not provide. That is, "[c]onsent decrees may produce more favorable results than more sweeping judicially imposed orders that might risk opposition and resistance."[10] Accordingly, "[w]hen the remedy that is jointly proposed by the[] parties is within reasonable bounds and is not illegal, unconstitutional, or against public policy, the courts should give it a chance to work."[11]

B. The Court should enter the Proposed Order for Judgment because it is fair, adequate, reasonable, and consistent with the public interest.

The proposed settlement is fair, adequate, reasonable, and in the public's interest. The parties spent 20 months negotiating the final package of agreements. They have invested significant resources and time to arrive at this global settlement that balances the interests of the governmental bodies and their constituents. The standard for acceptance of proposed settlements arises most often in class-action situations, and though this Court is not obligated to follow these

---

[8] *E.g.*, *United States v. Oregon*, 913 F.2d 576, 580-82 (9th Cir. 1990) (affirming entry of a consent decree resolving the parties' treaty fishing rights over the objections of defendant State of Idaho, who "participated in the negotiations" with the United States, five tribes, and the State of Oregon, "but did not sign the final plan" because "once the court is satisfied that the decree was the product of good faith, arms-length negotiations, a negotiated decree is presumptively valid, and the objecting party 'has a heavy burden of demonstrating that the decree is unreasonable.'"); *United States v. Dawson*, 328 Fed. Appx. 462, 2009 WL 2014086, at *1 (9th Cir. April 28, 2009) (affirming entry of consent decree resolving the parties' groundwater rights in Indian Country over the objections of certain parties because "[a] disputed decree that lacks the consent of those who negotiated it may be approved, so long as each party is given the opportunity to 'air its objections' at a reasonableness or fairness hearing."); *United States v. Michigan*, 12 Indian L. Reporter 3079 (W.D. Mich., May 31 1985) (entering consent order regarding Indian-treaty hunting-and-fishing rights over plaintiff Bay Mills Indian Community's objection).

[9] *Stotts v. Memphis Fire Dep't*, 679 F.2d 541, 554 (6th Cir. 1982) (citing case), *rev'd on other grounds*, 467 U.S. 561 (1984).

[10] *Id.* at 555.

[11] *United States v. City of Miami, Florida*, 614 F.2d 1322, 1333 (5th Cir. 1980).

cases, it may look to class-action case law for guidance. To determine whether a class-action settlement is "fair," the Sixth Circuit "has deemed a number of consideration, including the strength of plaintiff[s]' case, the good faith efforts of the negotiators, the opinions of counsel, and the possible risks involved in the litigation if the settlement is not approved, to be relevant[.]"[12] And to evaluate the public interest, "the district court must consider whether the decree is consistent with the public objectives sought to be attained by Congress."[13] In contrast, a court's "refusal to sign a consent decree based on generalized notions of unfairness is unacceptable."[14] Underpinning these considerations of fairness, adequacy, and public interest is the recognition that "public policy generally supports a presumption in favor of voluntary settlement of litigation. Indeed, the presumption is particularly strong where a consent decree has been negotiated by the Department of Justice on behalf of a federal administrative agency [], which enjoys substantial expertise in [its] field."[15]

In this case, the parties utilized a professional mediator and spent 20 months negotiating the final package of agreements. They have invested significant resources and time to arrive at this settlement that balances the interests of the governmental bodies and their constituents. Each of the five governments carefully balanced the needs of their various constituencies, which

---

[12] *Lexington-Fayette*, 591 F.3d at 489 (internal quotation and alteration omitted). *See also Int'l Union, United Auto., Aerospace and Agric. Implement Workers v. General Motors Corp*., 497 F.3d 615, 631-32 (6th Cir. 2007) (listing seven factors to guide a reasonableness inquiry in class-action cases).

[13] *Lexington-Fayette*, 591 F.3d at 490.

[14] *In re. Smith*, 926 F.2d 1027, 1029 (11th Cir. 1991) (granting mandamus action against district court where district court refused to enter consent decree that did not contravene state or federal statute or policy, and so was consistent with the public interest).

[15] *Lexington-Fayette*, at 490-91 (internal quotations omitted). *Accord City of Miami*,614 F.2d a 1332 (5th Cir. 1980) ("When the Justice Department advocates a settlement, we need not fear that its pecuniary interest will tempt it to agree to a settlement unfair to unrepresented persons . . . . We also note that the Justice Department must represent the interest of all citizens, white as well as black, males as well as female. This is thus a further constraint on any tendency for [agreed-to] relief to go too far.").

in this case often overlapped. Every citizen affected by this settlement is a constituent of the United States. The State, City, and County had to take into account the needs of their tribal and non-tribal constituents. And the Tribe had to balance the needs of its on- and off-reservation members (all of whom live in the State and County, but only some of whom live in the City). Thus, the very nature of these negotiations ensured that they were at arms' length.

Each party made concessions to reach this settlement—a fact dramatically demonstrated by the number of Agreements necessary to reach global settlement. The Settling Parties each approved the settlement after evaluating the respective strengths of their cases, and the very high risks that regardless of the outcome of a trial, this litigation would continue for years (if not decades) to come, deepening rifts between the respective governments and crippling their ability to work together for the benefit of their constituents. But most importantly, the Settling Parties' approved this settlement because it is very clearly in the public's interest. The public, by their respective governments, have spent a lot of money to reach this settlement, and many citizens were represented by four or five governments at the table. To reach the most "workable" solution for every party, the parties engaged not only their counsel, but also policy makers or their representatives, and personnel who had expertise in the various substantive areas, such as law enforcement, social services, taxation, zoning and land use. And the parties carefully negotiated recognition of the reservation to bridge the gap between current state-court interpretation of the Treaties of 1855 and 1864 and the relief that this Court could award at trial on this question of federal law.[16]

[16] *See, e.g.*, *Brown v. Neeb*, 644 F.2d 551, 563 (6th Cir. 1981) (affirming entry of consent decree that resolved federal race-discrimination claims, though it conflicted with Ohio law, because "[a] federal court's power under the Supremacy Clause to override conflicting state laws and/or

Footnote continued on next page

Each Settling Party is confident that the settlement offers broad-based certainty that litigation cannot provide. This negotiated solution strikes a careful balance that serves the interests of each of the governing bodies and their constituents, and the Settling Parties seek to move forward together in a spirit of intergovernmental cooperation. As a matter of dollars and sense, such cooperation would spare the Settling Parties the expense of what will very likely be at least another decade litigating the merits of this case through trial and appeals, and potentially several more decades addressing the subject-by-subject implications of a determination that the Isabella Reservation is Indian country. But it would also do more. A final settlement may help heal old wounds and build cooperative relationships that would help the governments facilitate the resolution of any future disputes as colleagues instead of adversaries.

If instead the parties are forced back to a litigation track, each is all but certain to move back to their polarized positions on their respective sides of the "v." They will not, nor in the spirit of zealous advocacy should they, hold back any punches if they are forced to litigate this case to its conclusion. And they will compound their litigation effort and expense with the bitter memory of 20 months and hundreds of thousands of dollars of public money would have been wasted. Given this posture, the Settling Parties can easily expect that if they are forced to take this case to trial, the wounds of this litigation, whatever its outcome, will take decades if not generations to heal. To arrive at such a result after all the parties carefully negotiated a groundbreaking resolution not only of the boundary question before the court, but also the important questions of local concern that litigating this case cannot and will not answer, would

---

Footnote continued from previous page

private agreements is well established."); *Armstrong v. Adams*, 869 F.2d 410, 414 (8th Cir. 1989) ("Any limitation of power imposed by state law on the Board of Election Commissioners is vitiated by the authority of the district court to remedy constitutional violations that may have occurred during the election.").

be disappointing indeed. Accordingly, after carefully weighing the expense and risks of litigation, the Settling Parties believe the proposed settlement is the most favorable outcome for this case.

C. The Court should allow a period of public comment before ruling on this motion.

As part of the settlement, the Settling Parties agreed to request that the Court postpone approval and entry of the proposed Order for Judgment until no earlier than November 23, 2010 so that the parties may accept public comment on the settlement. The Settling Parties agree that allowing public comment does not create or recognize a cognizable legal interest by members of the public in this case or in the proposed settlement, but nevertheless wish to entertain public comment as part of the settlement. The Settling Parties have asked the professional mediator in this case to monitor the following post office box:

> Saginaw Chippewa v. Granholm Settlement Comments
> Case No. 05-10296 BC
> P.O. Box 32991
> Detroit, MI 48232

for public comments until November 19, 2010, and the mediator has agreed to distribute these comments to the parties and the Court. The Settling Parties intend to provide the Court with a summary of those comments they receive by November 19, along with the parties' responses to the public comments, as appropriate. Accordingly, the movants respectfully request that the Court grant this motion and enter the proposed Order for Judgment after the conclusion of the comment period and after considering the parties' submissions regarding public comments and objections.

CONCLUSION

The Settling Parties have worked long and hard to resolve this case in a manner that benefits each of the governments and their constituents. The careful balance struck in the settlement between five sovereign governments resolves all of the issues before the court and even addresses issues of state and local concern outside the justiciable bounds of this case. The movants respectfully request expedited consideration of this motion and request that the Court enter the proposed Order for Judgment as being fair, adequate, and reasonable, and consistent with the public interest, after the conclusion of the comment period and after considering the parties' submissions regarding public comments and objections.

Dated: November 9, 2010

SAGINAW CHIPPEWA INDIAN TRIBE OF MICHIGAN

s/ William A. Szotkowksi
William A. Szotkowski (MN #161937)
Vanya S. Hogen (MN # 23879X)
Jessica S. Intermill (MN #0346287)
Sara K. Van Norman (MN #0339568)
Jacobson, Buffalo, Magnuson, Anderson & Hogen, P.C.
1360 Energy Park Drive, Suite 210
St. Paul, Minnesota 55108
Tele: (651) 644-4710
Fax: (651) 644-5904
E-mail: bszot@jacobsonbuffalo.com
vhogen@jacobsonbuffalo.com
jintermill@jacobsonbuffalo.com
svannorman@jacobsonbuffalo.com

Sean J. Reed (MI #P62026)
General Counsel, SCIT
7070 East Broadway
Mt. Pleasant, Michigan
Tele: (989) 775-4032
Fax: (989) 773-4614
E-mail: Sean.Reed@verizon.net

Dated: November 9, 2010.

STATE OF MICHIGAN, DEFENDANT GRANHOLM, and DEFENDANT RISING

s/ with consent of Todd Adams
Todd B. Adams (P36819)
Loretta S. Crum (P68297)
Michigan Attorney General
Environment, Natural Resources, and Agriculture Div.
525 West Ottawa St., Fl. 6
Lansing, MI 48909
Tele: (517) 373-7540
E-mail: adamstb@michigan.gov

CITY OF MT. PLEASANT

s/ with consent of Scott Smith
Scott G. Smith (P31966)
Clark Hill P.L.C.
200 Ottawa Ave NW, Suite 500
Grand Rapids, MI 49503
Tele: (989) 773-9961
E-mail: SGSmith@ClarkHill.com

COUNTY OF ISABELLA

s/ with consent of Larry Burdick
Larry J. Burdick (P31930)
Risa Scully (P58239)
200 N. Main St.
Mt. Pleasant, MI 48858
Tele: (989) 772-0911 x 311
E-mail: lburdick@isabellacounty.org

Certificate of Service

I certify that on November 9, 2010, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

<table>
<tr>
<td>Attorneys for State of Michigan, Defendant Granholm, and Defendant Rising

Todd B. Adams (P36819)
Loretta S. Crum (P68297)
Michigan Attorney General
Environment, Natural Resources, and Agriculture Div.
525 West Ottawa St., Fl. 6
Lansing, MI 48909
Tele: (517) 373-7540
E-mail: adamstb@michigan.gov</td>
<td rowspan="2">Attorneys for City of Mt. Pleasant:

John J. Lynch (P16886)
Mary Ann J. O'Neill (P49063)
Matthew A. Romashko (P59447)
Lynch, Gallagher, Lynch, Martineau & Hackett, P.L.L.C.
555 North Main
Mt. Pleasant, MI 48804-0446
Tele: (989) 773-9961
E-mail: jack@lglm.com; maryann@lglm.com; matthew@lglm.com

Scott G. Smith (P31966)
Clark Hill P.L.C.
200 Ottawa Ave NW, Suite 500
Grand Rapids, MI 49503
Tele: (989) 773-9961
E-mail: SGSmith@ClarkHill.com</td>
</tr>
<tr>
<td>Attorney for County of Isabella:

Larry J. Burdick (P31930)
Prosecuting Attorney for Isabella County
200 N. Main St.
Mt. Pleasant, MI 48858
Tele: (989) 772-0911 x 311
E-mail: lburdick@isabellacounty.org</td>
</tr>
<tr>
<td>Attorney for Defendant Cox

Mark Sands (P67801)
Michigan Attorney General
Appellate Division
P.O. Box 30217
Lansing, MI 48909
Tele: (517) 373-4875
E-mail: SandsM1@michigan.gov</td>
<td>Attorney for U.S.:

Patricia Miller
U.S. Department of Justice
Environment and Natural Resources Div.
Indian Resources Section
601 D Street NW, 3rd Fl., Rm. 3507
Washington, D.C. 20004
Tele: (202) 305-1117
E-mail: Patti.Miller@usdoj.gov</td>
</tr>
</table>

and I hereby certify that there are no non-ECF participants listed in the case that require service by U.S. mail.

s/ Jessica Intermill

Jacobson, Buffalo, Magnuson, Anderson & Hogen, P.C.
1295 Bandana Boulevard, Ste. 325
St. Paul, Minnesota 55108
Tel: (651) 644-4710
Fax: (651) 644-5904