

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

United States of America,
Plaintiff,

Bay Mills Indian Community,
Sault Ste. Marie Tribe of Chippewa
Indians, Grand Traverse Band of Ottawa
and Chippewa Indians,

Intervening Plaintiffs,

v

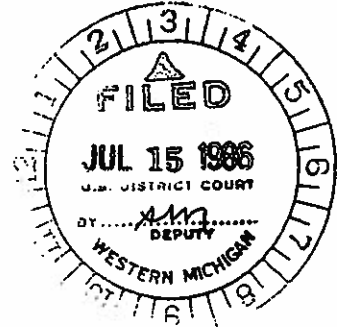
File No. M 26-73

State of Michigan, and its agents,
A. Gene Gazlay, Director of the
Department of Natural Resources; Henry
J. Vondett, Acting Chief, Fisheries
Division, Department of Natural
Resources; George Dahl, Chief
Enforcement Division, Department of
Natural Resources Commission;

Defendants.

OPINION

At the hearing held on July 2, 1986, the Court issued an oral Declaratory Order concerning some of the issues the parties raised in their information filings. Accompanying this opinion is a written final version of that order. The following opinion is intended to clarify the bases for the Court's declarations, and subsidiary findings and requirements. It should be apparent to all that the Court's opinion and order do not resolve all of the issues the parties raised in their filings. As the Court indicated at the hearing, it believes that three of the eight issues it has identified are actually "non-issues". Specifically, it appears (1) that the United States is



taking action to correct the problem of its \$1,500,000 contribution to the trust fund reverting to its ownership upon the expiration of the Agreement; (2) that the Court lacks the authority to control non-Agreement BIA-provided funding for tribal conservation activities, although the Court does interpret paragraphs 43(b) and 43(g) of the Agreement as prohibiting the United States from using the Agreement funding as a reason to reduce its other sources of funding to the Tribes for their fisheries programs; and (3) that the Treaty Waters Conservation Office should be located in Sault Ste. Marie. It also appears that the parties have agreed, with regard to issue number seven (7), that the Executive Council shall not be required at this time to adopt procedures to decide all issues brought before it. The one issue the Court believes is neither a non-issue, covered in its Declaratory Order, nor resolved by the parties, is issue number five (5), concerning the United States' role in the expenditure of funds by the Tribes. The Court believes that it should withhold ruling on this issue pending at least the next hearing in this case, and further developments in the Tribes' plans for the Agreement funds.

With regard to the first three issues, the following are the bases for the Court's Declaratory Order.

1. First, and perhaps foremost, it is clear that ownership of the Agreement funds is to vest in the Tribes, which are the only legal entities capable of owning the funds. The Grand Traverse Band is correct in its assertion that there is no such entity as "the Tribes" that could own the funds. The requirement that there be "a Treaty Waters Fisheries Management Fund", moreover, indicates that this ownership is to be joint; i.e., the Tribes are to own the trust funds jointly. The circumstances surrounding the negotiation of the Consent Order, and its eventual adoption by the Court, indicate, in addition, that the Tribes are not only to own the trust funds, and the other

nondesignated funding, jointly, but also are entitled--as individual tribal bodies--to an equitable share of, or to receive an equitable benefit from the expenditure of, such funds. In particular, as evinced by the affidavits submitted by Gregory Bailey (at ¶¶ 7-8), Arthur Duhamel (at ¶¶ 3-6), Arnold Parish, Jr. (at ¶¶ 3-5), and Joseph K. Lumsden (at ¶ 11), each Tribe shall, at a minimum, receive such funds as it needs to adjust to post-Agreement fishing conditions. The Court believes that the parties intended that each Tribe would receive sufficient funding to convert its fishing operations to accommodate the changes mandated by the Agreement (or Consent Order) and to compensate fishermen who are injured by such changes. The Court's discussion on pages 49-51 of its May 31st decision indicates that I also anticipated that the funding would be used to provide such assistance to the tribal fishermen.

2. This does not necessarily mean, however, that each Tribe is entitled to a one-third share, or benefit, of the funds. The affidavits submitted by Gregory Bailey and Arnold Parish do demonstrate, though, that each Tribe should receive--at a minimum--sufficient funds to meet the needs of its fishermen.

3. It also appears, although admittedly this issue is less clear, that the Tribes must decide jointly, working through either the Management Authority or some other inter-tribal body, how to spend the funds. The Court believes that the history of tribal cooperation with regard to certain issues and programs, and the existence of each Tribe's special needs, support a finding that these funds should be spent on both jointly operated and controlled programs and programs that are subject to the individual management and control of the Tribes. As the Court indicated in its oral Order, the Tribes must identify joint needs and individual needs, identify which of those needs should receive priority attention, and, eventually, budget monies to meet those needs. The

Court also believes that all three Tribes should be allowed to participate in the administration and operation of the Tribes' joint programs, and thus to receive some of the ancilliary benefits (such as employment opportunities) associated with such programming.

4. This joint management requirement also means that each Tribe must consent to funding decisions. In other words, the unanimous consent of the Tribes is required for the expenditure of Agreement funds. The Court anticipates that once the Tribes have identified their joint and individual needs, and have identified which needs should receive priority attention, they will prepare a budget to fund them. At that point, the Court would consider involving, if necessary, a master or some other kind of arbitrator to assist the Tribes in formulating an appropriate budget.

As the Court indicated at the hearing, it expects the Tribes to meet within the next three months to identify their joint needs and each Tribe's individual needs, and to identify which needs should receive priority attention. The Tribes shall submit a report to the Court on the results of their meeting(s) by no later than October 17, 1986. The Court will conduct a hearing on Tuesday, October 28, 1986, at 2:30 p.m., in Kalamazoo to consider such report and whatever other issues the Tribes, or the other parties, wish to bring before it.

DATED in Kalamazoo, MI:

July 15, 1986



RICHARD A. ENSLEN
U.S. District Judge

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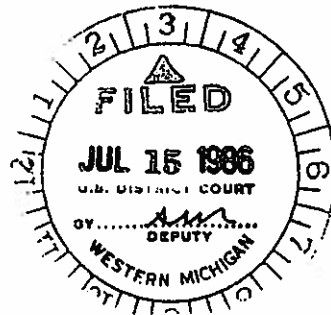
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DECLARATORY ORDER

In accordance with the oral Declaratory Order the Court issued at the hearing held on July 2, 1986, and with the written opinion dated July 15, 1986, the Court makes the following declarations concerning the issues the parties raised through their information filings:


1. IT IS HEREBY DECLARED that the Tribes own the trust fund monies, and the other nondesignated funding, jointly. These monies shall vest in the Tribes. Such vesting does not necessarily create a presumption, however, that each Tribe is entitled to a one-third share, or to receive a one-third benefit, of such funds.

2. IT IS HEREBY FURTHER DECLARED that there is a strong presumption that the Tribes are required to manage these funds jointly, either through the Management Authority or through some other inter-tribal entity. It is also clear that joint management requires the consent of each Tribe to any decisions concerning expenditures of funds; i.e., there must be a joint, unanimous, agreement as to the expenditure of funds.

As a subsidiary order, the Court hereby orders the Tribes to meet within ninety (90) days of the July 2nd hearing to identify their joint and individual needs, and to give priorities to those needs. The Tribes shall submit a report, or reports, to the Court on the results of their meeting(s) by no later than October 17, 1986. The Court will conduct a hearing on Tuesday, October 28, 1986, at 2:30 p.m., in Kalamazoo to consider such report(s) and whatever other issues the Tribes, or the other parties, wish to bring before it.

DATED in Kalamazoo, MI:

7/15/86



RICHARD A. ENSLEN
U.S. District Judge