

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS, a federally recognized
Indian tribe,

Plaintiff,

v

RICK SNYDER, Governor of the State of
Michigan,

Defendant.

No. 1:15-cv-850

HON. PAUL L. MALONEY

**DEFENDANT'S ANSWER TO
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND
AFFIRMATIVE DEFENSES**

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**DEFENDANT’S ANSWER TO COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND AFFIRMATIVE DEFENSES**

ANSWER

Defendant, Rick Snyder, Governor of the State of Michigan, by and through his Attorneys, Bill Schuette, Michigan Attorney General, and Jaclyn Shoshana Levine, Kelly M. Drake, and Nathan Gambill, Assistant Attorneys General, files this answer to Plaintiff’s complaint for declaratory and injunctive relief and states as follows:

NATURE OF THE ACTION

1. Executive Orders of 1855 and the 1855 “Treaty with the Ottawa and Chippewa”¹ guaranteed that the predecessor bands of the Plaintiff Little Traverse Bay Bands of Odawa Indians (the “Tribe”) would never have to leave a small portion of their ancestral homelands reserved to them and their future generations, and that they would have the power to exercise their sovereign powers within the boundaries of their reservation, which stretches 32 miles north-to-south from the northern tip of Michigan’s lower peninsula along the eastern shore of Little Traverse Bay (“Reservation” or “Little Traverse Reservation”).

¹ Exec. Order (Aug. 9, 1855), I Kappler: Laws: Pt. III: Exec. Orders Relating to Indian Reservations 849-50 (1904), *available at* http://digital.library.okstate.edu/kappler/Vol1/HTML_files/MIC0846.html (last visited July 22, 2015); *Treaty with the Ottawa and Chippewa*, 31 July 1855, 11 Stat. 621-629 (“1855 Treaty”).

ANSWER: Admit that Plaintiff is the descendant of and political successor to certain bands named in the Treaty with the Ottawa and Chippewa, 11 Stat. 621-629 (July 31, 1855) (1855 Treaty). Deny that Plaintiff's reservation "stretches 32 miles north-to-south from the northern tip of Michigan's lower peninsula along the eastern shore of Little Traverse Bay" (the alleged Reservation). Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

2. The Tribe has continuously asserted its right to occupy and exercised its sovereign governmental authority within the Reservation.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

3. The Reservation has never been diminished or disestablished.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations. Defendant states in further answer that he expects the record developed in this case to demonstrate that Plaintiff's reservation is substantially smaller than the alleged Reservation.

4. The United States government acknowledges the continued existence of the Reservation. But the State of Michigan does not recognize or respect the Reservation boundaries.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph concerning the United States' recognition of the alleged Reservation because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations. Admit that Defendant does not recognize that Plaintiff's reservation encompasses the entire area described as the alleged Reservation.

5. The Tribe brings this action for an order declaring that the lands within the boundaries of the Reservation are Indian country under federal law and enjoining the State from its improper exercises of authority within the Reservation.

ANSWER: Defendant denies that Plaintiff has alleged grounds that would entitle it to the relief sought or that Plaintiff has alleged any instances in which the State of Michigan has improperly exercised its own authority. Defendant neither admits nor denies the remainder of the allegations in this paragraph because they state Plaintiff's motivation for bringing suit, which does not require an answer.

6. This determination has significant present-day jurisdictional and governance ramifications for the Tribe. The Tribe seeks this declaration to protect its most culturally and historically valuable asset—its homeland—which the Tribe's ancestors fought to preserve and protect for all future generations.

ANSWER: Admit that a declaration concerning Plaintiff's reservation could have ramifications for state and tribal jurisdiction and governance. Defendant neither admits nor denies the remainder of the allegations in this paragraph because they state Plaintiff's motivation for bringing suit, which does not require an answer.

PARTIES

7. Plaintiff Little Traverse Bay Bands of Odawa Indians is a federally recognized Indian Tribe.² The Tribe is the present-day successor of Odawa³ signatory bands to the 1855 Treaty.

ANSWER: Admit. Defendant will also use the spelling "Odawa" rather than "Ottawa" in reference to Plaintiff, consistent with its preference.

8. Defendant Rick Snyder is the Governor of the State of Michigan. He is the head of the State's executive branch, and he is responsible for the overall adoption and administration of State agency policies, and for execution of laws within the State, including within the State's counties, townships, and other municipalities, all of which are creatures of the State and act through the State's delegated authority. The Tribe sues Snyder in his official capacity for the State of Michigan, and refers to Snyder, Michigan, and "the State" interchangeably.

² Indian Entities Recognized and Eligible To Receive Services from the United States Bureau of Indian Affairs, 80 Fed. Reg. 1944 (Jan. 14, 2015).

³ Reaffirmation Act, 25 U.S.C. § 1300k-4(b)(2)(A). Treaties and subsequent documents refer to the bands as "Ottawa," but the Tribe uses the more accurate transliteration, "Odawa."

ANSWER: Admit that Defendant is the current Michigan Governor and is the head of the executive branch of state government. Deny that Defendant is responsible for the adoption and administration of all state agency policies or for the execution of all laws within the State of Michigan. Deny that Defendant has responsibility for or control over local units of government in the absence of authority delegated by statute. Defendant neither admits nor denies the remainder of the allegations in this paragraph because the statement that he has been sued in his official capacity and the manner in which Plaintiff uses the terms “Snyder,” “Michigan,” and “the State” are not allegations of fact that require an answer.

JURISDICTION AND VENUE

9. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1362 (jurisdiction over actions brought by Indian tribes arising under the Constitution, laws, or treaties of the United States) because this action is brought by a federally recognized Indian tribe with a governing body duly recognized by the Secretary of Interior and raises substantial questions of federal law arising under the Tribe’s treaties with the United States and under federal common law.

ANSWER: Admit, subject to Defendant’s legal and factual defenses.

10. The Court has personal jurisdiction over the Defendant because Governor Snyder resides in Michigan and, in his official capacity, exercises his authority throughout the State.

ANSWER: Admit that this Court has personal jurisdiction over Defendant.

11. The allegations of the Complaint give rise to an actual controversy within the meaning of 28 U.S.C. § 2201.

ANSWER: Admit that there is a factual controversy. Defendant neither admits nor denies the remainder of the allegations in this paragraph because whether the controversy is within the meaning of 28 U.S.C. § 2201 states a legal conclusion that does not require an answer.

12. This Court has jurisdiction under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201(a), to issue a judgment declaring the rights of the Tribe to its Reservation under the 1855 Treaty and Executive Order.

ANSWER: Defendant neither admits nor denies the meaning of the Federal Declaratory Judgment Act, 28 U.S.C. § 2201(1), because it is a statement of law, which does not require an answer. Deny that Plaintiff has stated grounds on which it is entitled to a judgment declaring the boundaries of the alleged Reservation.

13. This Court has jurisdiction to issue injunctive relief under its equitable powers because no other remedy at law exists to stop the State from continuing to unlawfully deprive the Tribe of its treaty-protected rights.

ANSWER: Admit that as a general matter this Court has equitable powers. Defendant states in further answer that the Court's powers in this case extend only to awarding prospective injunctive relief if Plaintiff bears its burden of establishing a right to such relief. Deny that the State of Michigan has unlawfully deprived Plaintiff of its "treaty-protected rights" and that it is entitled to prospective injunctive relief in this matter.

14. Venue in this Court is proper under 28 U.S.C. § 1391(b)(2) because the events and omissions giving rise to the Tribe's claims occurred and are occurring on the Tribe's Reservation, which is within this District.

ANSWER: Admit that the matter in controversy involves an area of northwestern Michigan and that geographic area is within the jurisdiction of the United States District Court for the Western District of Michigan. Deny that Plaintiff has alleged actionable events and omissions involving Defendant occurring in that area. Deny that Plaintiff's reservation constitutes the entire area it describes as its alleged Reservation.

FACTUAL BACKGROUND

15. Hundreds of years before the arrival of Europeans, the Odawa Indians migrated into the area now known as Little Traverse Bay, the Beaver, Garden and High Islands in the northwest corner of the Lower Peninsula of Michigan, and the north shore of Lake Michigan in the southeast portion of the Upper Peninsula. The Odawa Indians established villages in these locations.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

16. The first recorded European contact with the Tribe occurred in 1615. Odawa Indians occupied the territory for the next 250 years.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

17. By the 1830s, the federal government's Indian policy focused on securing treaty cessions of land from Indians, removing Indians from these lands, and encouraging non-Indian settlement of the lands.

ANSWER: Defendant admits that the United States secured multiple land cessions in treaties with tribes residing in the territory that would become the State of Michigan and would be settled by many non-Indians. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

18. During this era, federal Indian agents pressured the Odawa to cede their lands and relocate to unfamiliar western locations.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

19. The bands of Odawa that today make up the Little Traverse Bay Bands of Odawa Indians fought for the right to remain in their homeland. In 1835, Odawa leaders traveled to Washington DC in an effort to secure their homeland. That effort culminated in the 1836 treaty negotiations between these Odawa and Chippewa bands with the United States.

ANSWER: Defendant admits that the United States executed a treaty with specified Odawa and Chippewa bands called the Treaty of Washington, 7 Stat. 491 (March 28, 1836) (1836 Treaty). Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

20. In negotiating the 1836 Treaty, certain Odawa and the Chippewa bands retained fourteen reservations, including a 50,000-acre reservation on Little Traverse Bay, and a reservation consisting of the Beaver Islands.⁴ The bands also reserved hunting, fishing, and other usufructuary rights throughout the cession area.⁵ In exchange, U.S. negotiators secured an over-26,000,000-acre cession that included nearly 14,000,000 acres of land that would become northwestern Michigan.⁶

⁴ Treaty of Washington, March 28, 1836, 7 Stat. 491.

⁵ 7 Stat. 491 at Article 13.

⁶ 7 Stat. 491.

ANSWER: Admit that the 1836 Treaty included substantial land concessions by multiple Native American tribes residing in Michigan and that the lands ceded would become the northwestern portion of the lower peninsula of Michigan and the eastern portion of the upper peninsula of Michigan.

Admit that Article 2 of the 1836 Treaty stated, in part, “From the cession aforesaid the tribes reserve for their own use, to be held in common the following tracts for the term of five years from the date of the ratification of this treaty, and no longer; unless the United States shall grant them permission to remain on said lands for a longer period, namely: One tract of fifty thousand acres to be located on Little Traverse bay:”

Admit that Article 3 of the 1836 Treaty stated, in part, “There shall also be reserved for the use of the Chippewas living north of the straits of Michilimackinac, the following tracts for the term of five years from the date of the ratification of this treaty, and no longer, unless the United States shall grant them permission to remain on said lands for a longer period, that is to say: . . . The Beaver islands of Lake Michigan for the use of the Beaver-island Indians”

Admit that Article 3 of the 1836 Treaty stated, in part, “The Indians stipulate for the right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement.”

Deny that paragraph 20 is a complete statement of all the terms and conditions of the 1836 Treaty. Defendant states in further answer that the usufructuary rights under the 1836 Treaty are hunting, fishing, trapping, and gathering. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

21. Rather than ratify the Treaty as negotiated, the United States Senate unilaterally modified the reservation clause, time-limiting it to only five years “unless the United States grant them permission to remain on said lands for a longer period.”⁷

ANSWER: Admit that Article 2 of the 1836 Treaty includes a five-year limitation. Defendant neither admits nor denies the statements made in the 1836 Treaty, which speaks for itself and requires no answer. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

22. The Odawa and Chippewa only accepted this amendment upon assurances from Michigan agent and U.S. negotiator Henry Schoolcraft that the United States would not enforce the five-year limit and the bands could remain on their reservation beyond the five-year sunset.

⁷ 7 Stat. 497.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

23. The Odawa understood Schoolcraft's assurances to mean that they would, in fact, never be removed from the reserved land in Michigan.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

24. The United States never did remove the Odawa, and instead tacitly gave permission for them to remain on their reservations beyond the five-year term and continuously recognized that the Odawa retained their reservation from 1841-1855.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

25. Although the United States never removed the Odawa, the Odawa nevertheless lived in constant fear of being forced from their reserved lands. This uncertainty as well as the United States' failure to fulfill certain obligations under the 1836 Treaty prompted negotiation for a new treaty.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

26. By 1854 the United States had shifted its Indian policy to focus on the creation of reservations, with the intent of concentrating Indians on such reservations in order to protect them from the onslaught of non-Indian settlement while simultaneously making the Indians easier for the government and missionary groups to “civilize.” Commissioner of Indian Affairs George Manypenny was one of the principal proponents of this policy and the federal government official responsible for implementing this changed federal policy.

ANSWER: Admit that a George Manypenny was a Commissioner of Indian Affairs for the United States for a period of time in the 1800s and that the United States has shifted its policies concerning tribes and Indians on multiple occasions. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

27. On May 14, 1855, President Pierce signed an executive order withdrawing 27 townships and fractional townships from public sale in advance of the upcoming treaty councils, so that no claims could be staked on the intended reservation during the treaty negotiations.⁸

⁸ R. McClelland to J. Wilson, 14 May 1855, NARA-DC, RG49, NARA-DC, RG49, Entry 29, Division A, Chief Clerks Office, Notices to Receivers of Local Land Offices Relating to their Appointments, 1840-44, box 7.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations. Defendant states in further answer that the 1855 Treaty did not purport to reserve or convey to Plaintiff's predecessors 27 full or fractional townships. Additionally, only 20 full or fractional townships are mentioned in paragraphs Third and Fourth of the 1855 Treaty.

28. In the negotiations that resulted in the 1855 Treaty of Detroit, the United States intended to secure permanent communities and homes for the bands and to insulate their communities from non-Indian settlers and simplify the government's planned "civilization" of Indians.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

29. The Odawa and Chippewa also intended to reserve lands for their bands and to maintain their political, cultural and economic integrity.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

30. A foremost concern for the Odawa was to alleviate removal fears by securing permanent homelands for themselves and future generations, in perpetuity.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

31. The 1855 Treaty effectuated the parties' intentions by securing for the Tribe a permanent nearly-216,000 acre reservation.

ANSWER: Deny that Plaintiff's current reservation encompasses the entire area described as the alleged Reservation or constitutes nearly 216,000 acres of land. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

32. The 1855 Treaty sets forth the reservations by surveyed townships. It states, in relevant part:

In view of the existing condition of the Ottowas and Chippewas, and of their legal and equitable claims against the United States, it is agreed between the contracting parties as follows:

ARTICLE 1.

The United States will withdraw from sale for the benefit of said Indians as hereinafter provided, all the unsold public lands within the State of Michigan embraced in the following descriptions, to wit: . . .

Third. For the Beaver Island Band—High Island, and Garden Island, in Lake Michigan, being fractional townships 38 and 39 north, range 11 west—40 north, range 10 west, and in part 39 north, range 9 and 10 west.

Fourth. For the Cross Village, Middle Village, L'Arbrechroche and Bear Creek bands, and such Bay du Noc and Beaver Island Indians as may prefer to live with them, townships 34 to 39, inclusive, north, range 5 west—townships 34 to 38, inclusive, north range 6 west—townships 34, 36, and 37 north, range 7 west, and all that part of township 34 north, range 8 west, lying north of Pine River.

ANSWER: Defendant neither admits nor denies the statements made in the 1855 Treaty, which speaks for itself and requires no answer. Admit that the 1855 Treaty identifies townships where the United States would withdraw unsold public lands from sale. Deny that Plaintiff's alleged Reservation consists of all lands within the boundaries of the townships named in the 1855 Treaty.

33. The bands described in paragraphs Third and Fourth of Article 1 of the 1855 Treaty are now known as the Little Traverse Bay Bands of Odawa Indians.⁹

ANSWER: Admit that Plaintiff is the descendant of and political successor to the bands described in paragraphs Third and Fourth of Article 1 of the 1855 Treaty.

34. The Reservation boundary described in paragraphs Third and Fourth of Article 1 is clear and unambiguous.¹⁰

⁹ Reaffirmation Act, 25 U.S.C. § 1300k-4(b)(2)(A).

¹⁰ 11 Stat. 621; *see also* Ex. A (Map).

ANSWER: Deny as untrue that the boundaries of Plaintiff's reservation are clear and unambiguous. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations. Defendant states in further answer that the map attached to the complaint as Exhibit A is a statement of Plaintiff's positions and arguments and not a document of independent legal relevance. Additionally, Exhibit A specifically states that it is for "general informational purposes only and is subject to change."

35. The 1855 Treaty Reservation stretches 32 miles north-to-south from the northern tip of Michigan's lower peninsula along the eastern shore of Little Traverse Bay. It includes the cities of Cross Village, Good Hart, Harbor Springs, Petoskey, and parts of Charlevoix. It also includes Garden and High Islands. The Reservation consists of 337 square miles, and approximately 103 miles of Lake Michigan Shoreline.

ANSWER: Admit that the area described in this paragraph includes the cities of Cross Village, Good Hart, Harbor Springs, Petoskey, and parts of Charlevoix, as well as Garden and High Islands. Deny that the area described in this paragraph constitutes Plaintiff's current reservation. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

36. The 1855 Treaty expressly references the Article 1 “reservations” in subsequent provisions.

ANSWER: Defendant neither admits nor denies the statements made in the 1855 Treaty, which speaks for itself and requires no answer.

37. The 1855 Treaty included an allotment scheme, which was typical of those reservation treaties Commissioner Manypenny negotiated, as an additional means of promoting Indian “civilization.”

ANSWER: Defendant neither admits nor denies the statements made in the 1855 Treaty, which speaks for itself and requires no answer. Defendant states in further answer that the 1855 Treaty provides for the allotment of certain lands. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

38. To further register and mark the 1855 Treaty Reservation immediately following execution of the Treaty, Commissioner Manypenny prepared a list of the lands to be withdrawn from sale to enable the Odawas and Chippewas to select the land guaranteed to them by the Treaty. The 1855 Treaty added to the land withdrawn from sale by the May 14, 1855 Executive Order, reserving Garden Island and High Island in lieu of land on Beaver Island.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph because the 1855 Treaty speaks for itself and because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations. Defendant states in further answer that paragraph Third of the 1855 Treaty references townships on Garden and High Islands, not Beaver Island.

39. With certain exceptions to special tracts previously appropriated, the lands on Manypenny's list were withdrawn from sale by Executive Order on August 9, 1855.¹¹

ANSWER: Defendant neither admits nor denies the allegation in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegation.

40. After the 1855 Treaty, land frauds plagued the area, but the Odawa continued to live on the Reservation and maintain it as their homeland.

ANSWER: Deny that Plaintiff's current reservation encompasses the entire area described as the alleged Reservation. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

¹¹ Executive Order with accompanying maps, 9 August 1855, NARA-DC, RG49, Entry 191, Division D, Mails and Files Division, Executive Orders of Presidents of the United States Relating to Land Matters, 1806-1913, Executive Order 8/9/1855.

41. The federal Indian agents failed to fully execute the allotment scheme of the 1855 Treaty.

ANSWER: Defendant neither admits nor denies the allegation in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegation.

42. To address the delays in allotments and the land-fraud and land-title issues, Congress passed an 1872 act that authorized Indian homesteads and allowed the United States to effectuate the original allotment plan of the 1855 Treaty.¹² The Act facilitated the terms of the 1855 Treaty by directing a two-step process: first, that Indian entries be processed and secured; and second, allowing the United States to sell the land that remained within the Reservation after Indian selection to non-Indians.

ANSWER: Defendant neither admits nor denies the substance of 17 Stat. § 381, a federal Act for the Restoration to Market for Certain Lands in Michigan enacted in 1872, because it speaks for itself and requires no answer. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

¹² 10 June 1872, 17 Stat. § 381, An Act for the Restoration to Market of Certain Lands in Michigan, (“1872 Act”).

43. The 1872 Act is consistent with continued reservation status.

ANSWER: Defendant neither admits nor denies the allegation in this paragraph because it calls for a legal conclusion, which requires no answer, and he lacks sufficient knowledge or information to form a belief concerning the truth of the allegation. Defendant states in further answer that he expects the record developed in this case to demonstrate that Plaintiff's reservation is substantially smaller than the alleged Reservation.

44. Land fraud continued to occur, precipitating technical amendments to the 1872 Act in 1875¹³ and 1876.¹⁴

ANSWER: Admit that 17 Stat. § 381 was amended in 18 Stat. § 516 (March 3, 1875) and 19 Stat. § 55 (May 23, 1876). Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

45. The federal government's inability to administer the allotment process resulted in title to much of the Reservation passing to non-Indians, but this did not operate to disestablish or diminish the Reservation.

¹³ 3 March 1875, 18 Stat. § 516

¹⁴ 23 May 1876, 19 Stat. § 55.

ANSWER: Admit that the vast majority of lands within the area described as the alleged Reservation are owned by non-Indian individuals and entities, though the number of acres or number of parcels owned by non-Indian individuals and entities is not known. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations. Defendant states in further answer that he expects the record developed in this case to demonstrate that Plaintiff's reservation is substantially smaller than the alleged Reservation.

46. In fact, Congress has never diminished or disestablished the Reservation.

ANSWER: Defendant neither admits nor denies the allegation in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegation.

47. In the decades following ratification of the 1855 Treaty, federal government agents continued to acknowledge the existence of the Little Traverse Reservation. For example:

a. In 1856, U.S. Deputy Surveyor William Burt described his instructions from the Surveyor General that “it is very necessary to have the survey of the Reservations made without delay,” and asked Michigan Indian Agent Henry C. Gilbert to assist his survey efforts;¹⁵

b. In correspondence during the January and February of 1858, Michigan Indian Agent A.M. Fitch and Acting Commissioner of Indian Affairs Charles E. Mix exchanged correspondence about the need to survey lands promised under the 1854 treaty in order to “properly locate[the bands] on their reservations[;]”¹⁶

c. Another 1858 letter from Michigan Indian Agent A.M. Fitch to Acting Commissioner of Indian Affairs Charles E. Mix described surveying and platting “lands for the Ottawas & Chippewas of Mich[iga]n on Reservations set apart for them by the treaty of July 31st 1855[;]”¹⁷

¹⁵ William Burt to Henry C. Gilbert, 20 July 1856, NARA-DC, RG75, Entry 1130, Letters Received by the Michigan Superintendency and Mackinac Agency, 1836-1870, Box 11, Volume 30, 1857.

¹⁶ Henry C. Gilbert to Charles E. Mix, 29 January 1858, National Archives and Records Administration, Record Group 75, Records of the Bureau of Indian Affairs, Letters Received by the Office of Indian Affairs, 1824-1881 (Washington, D.C.: National Archives Microfilms), Microcopy 234, Reel 406: Frames 169-171; A. M. Fitch to Charles E. Mix, 1 February 1858, National Archives and Records Administration, Record Group 75, Records of the Bureau of Indian Affairs, Letters Received by the Office of Indian Affairs, 1824-1881 (Washington, D.C.: National Archives Microfilms), Microcopy 234, Reel 406: Frames 36-38.

¹⁷ A[ndrew] M. Fitch to Chas. [Charles] E. Mix, 3 March 1858, National Archives and Records Administration, Washington, D.C., Record Group 75, Entry 1132, Letters Sent by the Michigan Superintendency and Mackinac Agency, 1836-1859, Box 3, Volume 6.

d. In 1869, Indian Agent D.C. Leach wrote to Commissioner of Indian Affairs E.S. Parker proposing to “enlarg[e] the Little Traverse Reservation” to accommodate other tribes in a single site.¹⁸

ANSWER: Defendant neither admits nor denies the allegations in this paragraph and subparagraphs (a), (b), (c), and (d) because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

48. The Tribe has maintained its presence on the Reservation prior to, during, and after 1855, including through the present day.

ANSWER: Deny that Plaintiff’s current reservation encompasses the entire area described as the alleged Reservation. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

49. As a federally recognized tribe, the Tribe exercises jurisdiction throughout the Reservation. For example:

¹⁸ D. C. Leach to E. S. Parker, 19 October 1869, National Archives and Records Administration, Record Group 75, Records of the Bureau of Indian Affairs, Letters Received by the Office of Indian Affairs, 1824-1881 (Washington, D.C.: National Archives Microfilms), Microcopy 234, Reel 408: Frames 864-866.

a. The Tribe's federally approved Constitution defines the Tribe's jurisdiction as "all the territory" that lies "within the boundaries of the reservation[] for the Little Traverse bay Bands of Odawa Indians as set out in Article I, paragraphs third and fourth of the 1855 Treaty, 11 Stat. 621[;]"¹⁹

b. The Tribe's Department of Human Services exercises jurisdiction over all Indian-child welfare matters within the Reservation boundaries, and exercises jurisdiction over all adult-protection cases involving tribal adults within the Tribe's Reservation;

c. The Tribe applies its hunting and conservation laws to all lands and waters within the boundaries of the Tribe's Reservation;

d. The Tribe applies its building and zoning codes to properties it owns within the Reservation boundaries, regardless of whether it holds the lands in fee or trust; and

e. The Tribe receives federal Indian Reservation Roads funds that it shares with local governments to build and maintain roads, including roads throughout the reservation that do not provide access to trust lands. The funding is only available to the Tribe because the roads are within the Tribe's Reservation.

¹⁹ Little Traverse Bay Bands of Odawa Indians Const. Art. III § H, Art. IV § B, *available at* <http://www.ltbbodawa-nasn.gov/OdawaRegister/LTBB%20Constitution.pdf> (last visited July 8, 2015).

ANSWER: Admit that federal law defines where and the circumstances in which Plaintiff may exercise jurisdiction and that Plaintiff is a federally-recognized tribe. Deny that Plaintiff's current reservation encompasses the entire area described as the alleged Reservation. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations. Defendant states in further answer that whether Plaintiff asserts that it has jurisdiction over matters or locations under tribal law does not resolve whether it has such jurisdiction and may exercise it in particular circumstances. There may be other factors that determine jurisdiction, such as voluntary agreements and consent decrees between a tribe and the State of Michigan. Further, jurisdiction and reservation boundaries are not identical concepts and the circumstances and places a federally-recognized tribe exercises jurisdiction does not necessarily establish the boundaries of a reservation.

50. Over the years, the State and local municipalities have acknowledged the existence of the Reservation and the Tribe's sovereignty through a variety of inter-governmental coordinations and agreements. For example:

a. The Tribe's tax agreement with the State exempts tribal citizens within the "tax-agreement area" from paying state income tax. Although it does not match the full boundaries of the reservation, the tax agreement area is much broader than the Tribe's trust lands and much more closely follows the Tribe's reservation boundary;²⁰

b. A Memorandum of Agreement between the State's Department of Environmental Quality and the Tribe recognizes the Tribe "as a governmental partner" in the State's assumption of the management of response activities that the U.S. Environmental Protection Agency began at an on-reservation leachate site;

c. State conservation officers and the Michigan Department of Natural Resources are aware that the Tribe applies tribal hunting and conservation laws to all land and waters within the Reservation, but have not objected to the Tribe's exercise of jurisdiction;

d. Emmet and Charlevoix counties have entered into numerous agreements with the Tribe to construct and maintain roads to certain tribal specifications and with funding that the Tribe secured from the Bureau of Indian affairs; and

²⁰ See Ex. A (Map).

e. Various police departments, including Alcona County, Alpena County, Antrim County, Benzie County, Charlevoix County, Cheboygan County, Crawford County, Emmet County, Grand Traverse County, Kalkaska County, Leelanau County, Manistee County, Missaukee County, Montmorency County, Osceola County, Oscoda County, Otsego County, Presque Isle County, Roscommon County, Wexford County, Boyne City, Rogers City, Village of Bellaire, City of Cadillac, City of Charlevoix, City of Frankfort, Village of Kalkaska, City of Petoskey, and City of Traverse City have from time to time entered into deputization, prisoner-housing, and mutual aid agreements with the Tribal Police and request Tribal Police assistance from time to time.

ANSWER: Deny that Plaintiff's current reservation encompasses the entire area described as the alleged Reservation. Deny that engaging in governmental relations with Plaintiff or recognizing that both the State of Michigan and Plaintiff are sovereign entities establishes or concedes the boundaries of the alleged Reservation. Defendant neither admits nor denies the remainder of the allegations in this paragraph concerning the understanding or actions of the State, municipalities, or other unnamed local units of government "over the years" because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

a. Admit that the State of Michigan and Plaintiff are parties to a voluntary tax agreement that is currently in effect. Admit that the tax agreement addresses, in part, whether specific taxes apply to Plaintiff's tribal members in named areas of the state. Deny that any provision of the tax agreement acknowledges or concedes the boundaries of the alleged Reservation. Defendant states in further answer that, among other things, the express language of the tax agreement precludes Plaintiff from using it to establish the boundaries of the alleged Reservation and tribal versus state jurisdiction in any judicial proceeding unrelated to enforcing the tax agreement. Further, though the map attached as exhibit A generally describes the agreement area under the tax agreement, whether any particular parcel falls within the scope of the agreement must be decided based on the express language of the agreement rather than the map attached to this complaint.

b. Defendant neither admits nor denies the allegations in this subparagraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations concerning an unnamed "Memorandum of Agreement" between the Michigan Department of Environmental Quality (MDEQ) and Plaintiff that has not been attached to the complaint. Defendant states in further answer that if the document referenced in this paragraph does

state that Plaintiff is a “governmental partner,” such a statement does not necessarily concede or establish the boundaries of the alleged Reservation. Additionally, if this subparagraph is referring to the 2012 Memorandum of Understanding between Plaintiff’s Natural Resources Department and MDEQ concerning the Little Traverse Bay Cement Kiln Dust (CKD) Release Site, that agreement does not establish or concede that the boundaries of the alleged Reservation encompass the site’s location in Resort Township or make it an “on-reservation” site.

c. Deny that Plaintiff is entitled to apply tribal hunting and conservation laws to all lands and waters within the alleged Reservation. Deny that complying with federal consent decrees concerning Plaintiff’s hunting and fishing rights in territory ceded in the 1836 Treaty is an acknowledgment or state concession of the boundaries of the alleged Reservation. Defendant neither admits nor denies the remainder of the allegations in this subparagraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

d. Defendant neither admits nor denies the allegations in this subparagraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations. Defendant states in further answer that, in the absence of a statutory delegation of authority, he does not exercise general authority over the governments of Emmet or Charlevoix Counties and is not bound by their independent actions.

e. Defendant neither admits nor denies the allegations in this subparagraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations concerning unidentified agreements with local police departments. Defendant states in further answer that, in the absence of a statutory delegation of authority, he does not exercise general authority over the listed police departments and is not bound by their independent actions. Additionally, only Charlevoix County, Emmet County, the City of Charlevoix, and the City of Petoskey are located within the alleged Reservation. The other local units of government named in this subparagraph are located outside the boundaries of the alleged Reservation and agreements with them have no apparent relevance to this dispute.

51. But the State has been inconsistent in its treatment of the Reservation, and in fact it has expressly refused to recognize the Tribe's Reservation in a number of ways that threaten the Tribe's autonomy and sovereignty, and that violate the 1855 Treaty. For example:

a. The State insists upon asserting jurisdiction over Indian child-welfare matters on fee land within the Reservation. This violates the Indian Child Welfare Act,²¹ which gives tribes sole authority over Indian-child welfare matters within the boundaries of its reservation.²² On-the-ground confusion often arises in these contexts when children and families are forced to deal with both the Tribe and the State. Often, the agencies apply differing standards for when a family meets program requirements, what efforts should be used to assist the family, and when a child should be removed (with the Tribe's guidelines tending to be even more protective over the child than the State's guidelines).

b. The graves protection provisions of the Native American Graves Protection and Reparations Act²³ apply to Native American human remains, funerary objects, and other kinds of "cultural items" located on or within federal land and "all lands within the boundaries of any Indian reservation."

²¹ 25 U.S.C. §§1901-1963 ("ICWA").

²² 25 U.S.C. § 1911(a).

²³ 25 U.S.C. §§ 3001 – 3013 ("NAGPRA").

25 U.S.C. §3001(15). As such, NAGPRA recognizes tribal authority over Native American graves and funerary objects within Reservation boundaries, regardless of land ownership status. But certain local governments and municipalities do not follow NAGPRA procedures for the inadvertent discovery or planned excavation of the Tribe's cultural items on Reservation land.

c. Under federal law, the State may not impose individual income tax on tribal citizens who live and work within the Reservation. But when the State negotiated a tax agreement with the Tribe, it refused to exempt all tribal citizens residing on the Reservation from income taxation. Instead, the State would only agree to exempt those living within a "tax agreement area" from state income taxation. Three townships located within the reservation boundary are not included in the "tax agreement area."²⁴ The State forces tribal citizens who live within these three townships of the Reservations and work within the Reservation to pay state income taxes contrary to federal law.

²⁴ See Ex. A (Map).

ANSWER: Deny that Plaintiff's current reservation encompasses the entire area described as the alleged Reservation. Deny that unspecified "inconsistent treatment" of reservation boundaries as alleged in this paragraph is a violation of the 1855 Treaty or actionable. Deny that Defendant has threatened Plaintiff's lawful exercise of its sovereignty or autonomy.

a. Defendant neither admits nor denies the allegations in this subparagraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations, which include no specific facts.

b. Defendant neither admits nor denies the allegations in this subparagraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations, which include no specific facts. Defendant states in further answer, absent a statutory delegation of authority, he is not bound by the actions of the unspecified municipalities and local units of government referenced in this subparagraph.

c. Deny that federal law precludes Plaintiff from entering into a voluntary agreement with the State that determines the application or non-application of state income tax laws to Plaintiff's tribal members. Defendant neither admits nor denies the remainder of the allegations in this subparagraph concerning three unnamed

townships and unnamed tribal members because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations. Defendant states in further answer that the tax agreement precludes Plaintiff from using it in judicial proceedings unrelated to its enforcement.

52. The State's inconsistent treatment of the Reservation injures the Tribe's ability to fully assert its jurisdiction and sovereignty:

a. The health, safety, and spiritual and cultural wellbeing of the Tribe's children within the Reservation depend on the exercise of LTBB's exclusive jurisdiction under ICWA.

b. The health, safety, and spiritual and cultural wellbeing of the Tribe's vulnerable elder adults depend on the Tribe's ability to exercise jurisdiction throughout the Reservation;

c. Sacred burial grounds that include human remains and funerary objects are located throughout the Reservation. Application of NAGPRA would enable the Tribe to protect these cultural objects;

d. The Violence Against Women Reauthorization Act of 2013²⁵ included a “special domestic violence criminal jurisdiction” provision. The program allows tribal courts to prosecute non-Indian defendants accused of domestic or dating violence against Native American women on a Reservation. Boundary recognition would bring clarity to the Tribe’s assertion of VAWA jurisdiction; and

e. The Tribe’s ability to protect air, land, and water in its homeland depends on its ability to continue monitoring environmental conditions throughout its Reservation.

ANSWER: Deny that Plaintiff’s current reservation encompasses the entire area described as the alleged Reservation. Deny that there has been “inconsistent treatment” of reservation boundaries as alleged in this paragraph, or that “inconsistent treatment” is a violation of the 1855 Treaty, is actionable, or causes injury to Plaintiff. Defendant neither admits nor denies the remainder of the allegations in this paragraph and subparagraphs (a), (b), (c), (d), and (e) because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

²⁵ 8 U.S.C. § 1367 (“VAWA”).

53. Equally important social and political concerns hinge on Reservation recognition. Tribal ancestors steadfastly resisted removal to enable future generations to continue Tribal traditions and culture in the Tribe's ancestral homeland. Protecting the Reservation is an important aspect of honoring the work of the Tribe's ancestors and continuing the Tribe's cultural traditions, which are tied to the Reservation.

ANSWER: Defendant neither admits nor denies the allegations in this subparagraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

CLAIM FOR RELIEF

Count 1

54. The Tribe realleges and incorporates by reference paragraphs 1 through 53 as if fully set forth herein.

ANSWER: Defendant re-alleges his answers to paragraphs 1 through 53 and their individual subparagraphs as if fully restated here.

55. The Reservation as set forth in Article 1 of the 1855 Treaty of Detroit, paragraphs Third and Fourth exists today, and consists of 32 miles north-to-south from the northern tip of Michigan's lower peninsula along the eastern shore of Little Traverse Bay. It includes the cities of Cross Village, Good Hart, Harbor Springs, Petoskey, and parts of Charlevoix. It also includes Garden and High Islands.

ANSWER: Admit that the area described in this paragraph includes the cities of Cross Village, Good Hart, Harbor Springs, Petoskey, and parts of Charlevoix, as well as Garden and High Islands. Deny that the area described in this paragraph constitutes Plaintiff's current reservation. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

56. The United States Congress has never revoked, disestablished, or diminished the Reservation.

ANSWER: Defendant neither admits nor denies the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations. Defendant further states that the factual record to be developed in this case may demonstrate that allotment and other disposition of lands to non-Indian individuals and entities is inconsistent with the establishment of the reservation boundaries that Plaintiff claims or the continued status of a reservation within those boundaries.

57. The Reservation is Indian country as that term is used in 18 U.S.C. § 1151 and United States Supreme Court decisions.

ANSWER: Deny that Plaintiff's current reservation encompasses the entire area described as the alleged Reservation and that the entire area constitutes Indian country within the meaning of 18 U.S.C. § 1151 and unspecified Supreme Court precedent.

58. The State's inconsistent treatment of the Little Traverse Reservation causes the Tribe irreparable harm because it deprives the Tribe of the bargained-for benefits of the 1855 Treaty and infringes upon the Tribe's inherent sovereignty. The Tribe cannot fully assert its sovereignty and jurisdiction over its territory until the State recognizes the Tribe's retained right to govern the Reservation established by the Executive Orders of 1855 and 1855 Treaty with the Ottawa and Chippewa.

ANSWER: Deny that there has been "inconsistent treatment" of reservation boundaries as alleged in this paragraph, or that "inconsistent treatment" is a violation of the 1855 Treaty, is actionable, or causes injury to Plaintiff. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

59. The Tribe has no adequate remedy at law for the damages caused by the State's actions; the Tribe's right to recognition of its reservation is unique and is related to the sovereignty and jurisdiction of the Tribe.

ANSWER: Deny that Plaintiff has suffered damages caused by Defendant. Defendant neither admits nor denies the remainder of the allegations in this paragraph because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations.

DEFENDANT'S ANSWER TO FOOTNOTES:

Except as otherwise stated in the foregoing answers, Defendant neither admits nor denies the existence, content, or meaning of any documents or materials referenced in the footnotes in the complaint because he lacks sufficient knowledge or information to form a belief concerning the truth of the allegations. In further answer, Defendant states that no such documents are attached to the complaint except Exhibit A, a map that Plaintiff created.

DEMAND FOR RELIEF

WHEREFORE, the Tribe respectfully asks this Court to enter judgment in its favor and to:

I. Issue a declaratory judgment, pursuant to 28 U.S.C. § 2201 and § 2202 and other applicable law, against the Defendant Governor of Michigan declaring that the Little Traverse Reservation as established by the Executive Order of 1855 and the 1855 Treaty of Detroit exists today, and that all lands within the Reservation are Indian country under federal law.

II. Issue a permanent injunction, pursuant to the Court's equity jurisdiction, 42 U.S.C. § 1983, and other applicable law, forever barring the current and future Defendant Governor of Michigan, as well as the State's agents, servants, employees, officers and attorneys, municipalities, and anyone acting in concert with them:

1. From asserting jurisdiction over the Tribe or Tribal citizens in any way inconsistent with the Reservation's status as Indian country; and

2. From taking any actions that would interfere with the rights of the Tribe and its citizens under federal law to be otherwise free of state law and regulation within the Little Traverse Reservation.

III. Grant any further relief as the Court may deem appropriate under the circumstances.

ANSWER:

WHEREFORE, Defendant respectfully requests that this Court:

- A. Deny all relief requested by Plaintiff;
- B. Dismiss the complaint with prejudice;
- C. Enter judgment in Defendant's favor declaring that Plaintiff's reservation consists solely of lands held in trust by the United States for the benefit of Plaintiff;
- D. Award Defendant his costs and attorney fees; and
- E. Award Defendant any further or additional relief that may be just and equitable under the circumstances.

AFFIRMATIVE DEFENSES

Defendant Rick Snyder gives notice that he may rely on one or more of the following defenses in this action, which may be revised or supplemented following discovery and as permitted by the court rules and this Court:

1. Plaintiff has failed to state a claim upon which relief may be granted.
2. Sovereign immunity.
3. Failure to join necessary or indispensable parties to the extent that Plaintiff seeks relief against local units of government, municipalities, state employees, state officials, state agencies, branches of state government, and other individuals or entities not named as parties in this action.
4. Plaintiff seeks relief that would be disruptive to longstanding observances or settled expectations concerning state versus tribal jurisdiction.
5. Equitable and pragmatic concerns derived from the laches, acquiescence, impracticability, impossibility, or other equitable doctrines.
6. Plaintiff's reservation does not consist of all the lands claimed as the alleged Reservation. The alleged Reservation may not have been created with the boundaries that Plaintiff claims, or it may have been revoked, diminished, disestablished by Congress or through a combination of other events with the same or similar legal consequences including, but not limited to:
 - a. acts providing for the allotment of lands within the alleged Reservation, whether generally applicable in the United States or specifically applicable in Michigan;

b. acts providing for the disposition of public lands to non-Indians within the alleged Reservation;

c. the failure of Plaintiff's predecessors to select available lands within the townships identified in the 1855 Treaty; or

d. the subsequent disposition of lands selected by Plaintiff's predecessors to non-Indian owners.

7. Plaintiff has not actually or continuously exercised jurisdiction over the entire area it claims as the alleged Reservation.

8. Plaintiff may not divest the State of Michigan of its jurisdiction over lands, people, entities, and natural resources outside of Plaintiff's jurisdiction or where Plaintiff and the State of Michigan share jurisdiction.

9. Plaintiff may not divest the State of Michigan of its jurisdiction over lands it owns within the alleged Reservation.

10. The tax agreement between Plaintiff and the State of Michigan remains in effect and includes multiple provisions that bar Plaintiff from using that agreement to attempt to establish its jurisdiction or reservation boundaries.

11. This suit is barred by an agreement to arbitrate to the extent that Plaintiff seeks to dispute alleged acts or omissions under its tax agreement with the State of Michigan.

12. This suit is barred to the extent that Plaintiff seeks to dispute alleged acts or omissions under the consent decrees that govern Plaintiff's 1836 Treaty hunting, fishing, gathering, and trapping rights because those consent decrees contain alternative dispute resolution processes with which Plaintiff has not complied.

Respectfully submitted,

Bill Schuette
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LF: LTTB v Snyder/AG#2015-0118437-AL/Answer to Complaint 2015-09-15