

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF MICHIGAN

BRENDA TURUNEN,
Plaintiff,

v.

File No. 2:13-CV-00106
Hon. Gordon J. Quist

KEITH CREAGH, DIRECTOR, MICHIGAN
DEPARTMENT OF NATURAL RESOURCES,
and JAMIE CLOVER ADAMS, DIRECTOR,
MICHIGAN DEPARTMENT OF NATURAL RESOURCES.
Defendants.

**PLAINTIFF'S RESPONSE TO ISSUES RAISED BY FOUR OF THE
1842 SIGNATORY TRIBES REGARDING REQUIRED PARTIES UNDER RULE 19 OF
THE FEDERAL RULES OF CIVIL PROCEDURE**

ORAL ARGUMENT REQUESTED

As described in Plaintiff's September 21, 2015 Report, pursuant to this Court's August 21, 2015 Order Plaintiff contacted all ten of the modern-day successors in interest of the tribal signatories to the 1842 Treaty with the Lake Superior Chippewa Indians and informed them of the instant litigation and their right to intervene. Four of the ten tribes, the Keweenaw Bay Indian Community, the Lac Courte Oreilles Band of Lake Superior Chippewa Indians, the Red Cliff Band of Lake Superior Chippewa Indians and the Fond du Lac Band of Lake Superior Chippewa (hereafter "Responding Tribes")¹ contacted the Court directly in response to

¹Plaintiff is convinced that the only required party under Rule 19 is the Keweenaw Bay Indian Community since KBIC issued Plaintiff's license and since Plaintiff's farm is contiguous to

Plaintiff's notice of the Court's inquiries.

In nearly identical letters all four tribes decline to intervene and have asserted that they are required parties who possess sovereign immunity from suit and thus cannot be joined to the instant litigation. Consequently, the Responding Tribes argue, the case must be dismissed pursuant to Rule 19 of the Federal Rules of Civil Procedure. In response to the arguments raised by the Responding Tribes, Plaintiff generally relies upon her July 13, 2015 PLAINTIFF'S BRIEF REGARDING JOINDER OF THE 1842 SIGNATORY TRIBES PURSUANT TO RULE 19 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

In further response to the specific issues raised by the four responding tribes Plaintiff reminds the Court that "the essence of Rule 19 is to balance the rights of all those whose interests are involved in the action." Glancy v. Taubman Centers, Inc., 373 F.3d 656, 664 (6th Cir. 2004). Applying that balancing test to the issues raised by the Responding Tribes demonstrates that the balance tips strongly in favor of allowing the instant litigation to proceed. The record before the Court demonstrates that Defendants have attempted to destroy Plaintiff's Treaty-protected farming operation through an Invasive Species Order that was quite purposefully directed at Plaintiff's farm, as well at several so-called hunting ranches in the state of Michigan. The prejudice to Plaintiff caused

the KBIC reservation. Since KBIC has adopted the same position as the other Responding Tribes, however, that issue is moot for purposes of the Court's instant analysis.

by denying her a federal forum to litigate her rights and protect her farm certainly outweighs the Responding Tribes' concerns about a possible "narrow definition" of the Treaty farming right that might occur in their absence, or the threat of the state facing multiple lawsuits and conflicting rights and obligations. See, generally, Plaintiff's July 13, 2015 brief.

The Responding Tribes also argue that Plaintiff is not in a position to adequately represent their interests.² Plaintiff has been granted a farming license by the Keweenaw Bay Indian Community, in and of itself an assertion of the subject Treaty right. Plaintiff's entire farming operation is in jeopardy due to the actions of the Defendants. Plaintiff certainly shares a substantially identical interest as that of KBIC in the instant litigation and is well positioned to protect that interest. Accordingly, balancing the potential harm to the Responding Tribes against the harm to Plaintiff of losing her livelihood clearly tips the scales in favor of allowing the action to continue.

Finally, the Responding Tribes' argument that Plaintiff has an alternative forum in the state courts has no merit. Like Rule 19, Rule 2.205 of the Michigan Court Rules seems to require a similar analysis regarding joinder of the Keweenaw Bay Indian Community and/or dismissal of the action. Seeking redress in state court will

²Including, surprisingly, the Keweenaw Bay Indian Community which granted Plaintiff a license to engage in the precise activity under attack by the Defendants.

likely leave Plaintiff in precisely the same posture as she is now, except that, if she were to prevail on the joinder issue, she would then be seeking to litigate a quintessentially federal question in a state forum. The alternative remedy pointed to by the Responding Tribes is illusory at best and does nothing to alleviate the prejudice suffered by Plaintiff if the action is dismissed.

For the reasons discussed above, and for the reasons discussed in Plaintiff's July 13, 2015 brief, this action should be allowed to continue and Plaintiff allowed her day in this Court to preserve her treaty right to farm.

Respectfully submitted,

Date: January 4, 2016

/s/ Joseph P. O'Leary
Joseph P. O'Leary (P43349)
O'LEARY LAW OFFICE
419 U.S. 41 North
Baraga, MI 49908
(906) 201-1144

Date: January 4, 2016

/s/ Glenn W. Smith
Glenn W. Smith (P42704)
BENSINGER, COTANT & MENKES
122 West Bluff Street
Marquette, MI 49855
(906) 225-1000
ATTORNEYS FOR PLAINTIFF