UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DUSTIN LEE MACLEOD,
Plaintiff,
v.
WILLIAM MORITZ, *et al.*,
Defendants.

No. 5:18-cv-11653-JEL-MKM
HON. JUDITH E. LEVY
MAG. MONA K. MAJZOUB

Dustin Lee MacLeod, Prisoner #956261
Plaintiff in Pro Per
Parnell Correctional Facility
1780 East Parnell Street
Jackson, MI 49201

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Proposed Intervenor in Pro Per
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OBJECTIONS TO MAGISTRATE'S REPORT AND RECOMMENDATIONS

Objection #1 – The Magistrate makes the claim that the 1836 Treaty of Washington "does not create 'individual rights' enforceable under § 1983."

Individual Indians have brought a number of § 1983 cases in federal District Courts to enforce their treaty rights. *See, e.g., Canadian St. Regis Band of Mohawk Indians ex rel. Francis v. New York,* 278 F.Supp.2d 313 (N.D.N.Y. 2003); *Oyler v. Finney,* 870 F.Supp. 1018 (D.Kan. 1994), *aff'd,* 52 F.3d 338 (10th Cir. 1995) (unpublished table decision); *Mille Lacs Band of Chippewa Indians v.*

Minnesota, 853 F.Supp. 1118 (D.Minn. 1994), *aff'd,* 124 F.3d 904 (8th Cir. 1997), *aff'd,* 526 U.S. 172,119 S.Ct. 1187, 143 L.Ed.2d 270(1999); *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin,* 663 F.Supp. 682(W.D.Wis. 1987), *appeal dismissed,* 829 F.2d 601 (7th Cir. 1987) (per curiam); *Sohappy v. Smith,*302 F.Supp. 899 (D.Or. 1969), *aff'd in part,* 529 F.2d 570 (9th Cir. 1976) (per curiam); *Skokomish Indian Tribe V. U.S.* 410 F.3d 506 (9th Cir. 2005).

Furthermore, *United States v. Winans* (198 U.S. 371 (1905)) contains this language: "[Indian treaties] reserved rights, however, to every individual Indian, as though named therein. They imposed a servitude upon every piece of land as though described therein." (Emphasis added).

Given the cases cited above, Plaintiff clearly has a right of action under § 1983.

Objection #2 – The Magistrate states that "The court should find that the Plaintiff lacks standing to enforce the Consent Decree."

In *Mason v. Sams,* 5 F.2d 255 (W.D.Wash. 1925), the Court held that the "right to a common is the right of an individual of the community." [*Id.*]. Therefore, it is clear from *Mason*, that the Plaintiff has standing as a right of user in tribal property derived from the legal or equitable property right of the Tribe of which he is a member. 590 F.2d at 773.

Objection #3(a) – The Magistrate denies "that the Consent Decree gives [Plaintiff] a property interest in the State Forest."

The Magistrate seems to be confusing a "property interest in the state forest" with a "property interest" in the form of the $100 fine that the Plaintiff paid as a result of the "ticket" that he was issued for failure to remove "personal property" from state land. Given this confusion, it is impossible to determine exactly what "property" element of "procedural due process" she is referring to in her Report #3(a).

Objection #3(b) – The Magistrate claims that the Defendants' action does not "shock the conscience."

With all due respect, if the federal government agrees with the Magistrate that "Damage to

religious property and/or the obstruction of persons in the free exercise of their religious beliefs" does not "shock the conscience" of even the most disinterested person, the government would have never enacted 18 U.S. Code § 247.

Objection #4 – The Magistrate states that "the arbor and lodges [Plaintiff] constructed ... do not meet [the] criteria [of a brush blind]," alluding to "photographs of structures referred to in amended complaint."

Plaintiff's case, in part, rests on the simple fact that the Consent Decree recognizes his "usual privilege of occupancy" Treaty right to "use and construct a sweat lodge." (Decree, 6.2(a)). The main point in this Objection is simple –if the Defendants recognized the Sacred Structures as mere "brush blinds," they would have most likely left them alone; but, when the Defendants recognized that the "brush blinds" were actually Sacred Structures, they destroyed them "because of the religious character of that property" (see 18 U.S. Code § 247 (a) 1 & 2). This is an issue for the "trier of fact" to determine.

Objection #5 – The Magistrate states that "The law at issue in this case, MDNR State Land Rule R 299.922, is neutral and of general applicability."

Again, with all due respect, "the law at issue in this case" is the "Supreme Law of the Land"--the 1836 Treaty of Washington, and its attendant Consent Decree-- not some "state land rule." Again quoting *Winans*, "[the 'usual privileges of occupancy' 'right' of the 1836 Treaty of Washington] was not a grant of right to the Indians, but a reservation by the Indians of rights already possessed and not granted away by them. The rights so reserved imposed a servitude on the entire land relinquished to the United States under the treaty and which, as was intended to be, was continuing against the United States and its grantees, as well as against the state and its grantees." (emphasis added).

Objection #6 – The Magistrate states that "Those statutes [cited by Plaintiff] are either invalid or not enforceable by Plaintiff."

The claim that certain "statues are either invalid or not enforceable" is not a valid claim. That is,

Plaintiff argues that the Magistrate should state, "with specificity" and "precisely" (both terms taken from her Report), which statute is or is not "invalid," and which statute is or is not enforceable. If the Plaintiff' is required to be held to those standards in its Objections, it is common-sensicle that the Magistrate needs to also be held to "specific and precise" standards in her Report. That is, it is impossible for the Plaintiff to object/respond with "precise and specific" arguments to claims that are vague and imprecise.

Objection #7 – The Magistrate states that MDNR State Land Rule R 299.922 "is not a zoning or landmarking law, ... the Court should dismiss this claim."

In her Report #7, the Magistrate admits that, under RLUIPA, a "claimant must have 'an ownership. leasehold, easement, servitude, or other property interest in the regulated land'." Again, Plaintiff' directs the Court to *Winans*, wherein it states: "[Indian treaties] reserved rights, however, to every individual Indian, as though named therein. They imposed a **servitude** upon every piece of land as though described therein." (Emphasis added).

Objection #8 – The Magistrate states "If the Court adopts the [Magistrate's] recommendation to dismiss all of Plaintiff's federal-law claims" the Court should dismiss the state-law claims, as well.

The key to Plaintiff's Objection here is to the use of the word "if" in the Magistrate's Report. Again, the use of the word "if" does not present the Court with a claim that is stated "with specificity" and/or "precision." That is, Plaintiff, as required, cannot object/respond with "precise and specific" arguments to claims that are vague and imprecise.

RESPECTFULLY SUBMITTED:

s/ *Dustin L. MacLeod* Dustin L. MacLeod, Plaintiff, on April 10, 2019

PROOF OF SERVICE

I, Philip C. Bellfy, Proposed Intervenor, declare that on April 10, 2019, I placed a true copy of this filing in the United States mail enclosed in sealed envelopes with postage fully prepaid, addressed as follows:

US District Court Clerk's Office
Attn: Judge Judith E. Levi & Magistrate Mona K. Majzoub
Case No.: 5:18-cv-11653-JEL-MKM
231 W Lafayette Blvd,
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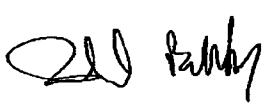

Philip C. Bellfy Date: April 10, 2019

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Detroit MI 48226

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ATTN: Magistrate Mona K. Majzoub — 5:18-cv-11653