UNITED STATES OF AMERICA
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

and

BAY MILLS INDIAN COMMUNITY, SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS, GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS, LITTLE RIVER BAND OF OTTAWA INDIANS, and LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS,

Plaintiff-Intervenors,

and

STATE OF MICHIGAN, *et al*.,

Defendants.

File No. 2:73-cv-26

Hon. Paul L. Maloney

GRAND TRAVERSE BAND'S SUPPLEMENTAL RESPONSE TO SAULT TRIBE'S RECONSIDERATION MOTION (ECF No. 2046)

Introduction

The Grand Traverse Band of Ottawa and Chippewa Indians ("GTB") submits this supplemental response to the Sault Tribe's motion for reconsideration (ECF No. 2046) of this Court's November 14, 2022 order extending the 2000 Consent Decree (ECF No. 2027). GTB concurs with the response filed by the United States and other Tribes (Bay Mills, Little River, and Little Traverse) and won't reiterate those arguments.

This supplemental response is submitted to address a potential unintended consequence of ruling on the motion: the possibility that the "reconsideration" motion is a ruse designed to trigger an interlocutory appeal. Because judicial approval of a consent decree's prospective provisions operates as an injunction[1], appellate jurisdiction could be asserted under 28 U.S.C. § 1292(a)(1) from an order denying the Sault Tribe's motion, thereby potentially divesting this Court of jurisdiction (at least in the short term).

This would have the effect of short-circuiting the process that all seven parties have been involved in for almost three and a half years, namely negotiating and implementing terms of a successor decree governing treaty-reserved rights declared on May 7, 1979. *United States v. Michigan,* 471 F. Supp. 192, at 278-81 (W.D. Mich. 1979), *aff'd.* 653 F.2d 277 (6th Cir. 1981), *cert. denied*, 454 U.S. 1124 (1981). In effect this would accomplish through the "back door" what the Sault Tribe had requested in its December 27, 2022 motion (ECF No. 2055) (subsequently withdrawn on February 7, 2023 (ECF No. 2070)).

A. Sault Tribe's "Reconsideration" Assertion Was Previously Litigated

The basic premise of the December 12, 2022 motion (ECF No. 2046) is that there is no basis for extending the 2000 Consent Decree "over the objection of the Sault Tribe." ECF No. 2046 at PageID.12360. At page 2 the supporting brief contends that the "bare-bones motion to indefinitely extend the Consent Decree did not meet the rigorous standard" for modifying a consent decree. ECF No. 2047 at PageID.12370.

This argument overlooks the fact that Sault Tribe's basic premise was fully litigated two and a half years ago, resulting in this Court's July 24, 2020 Opinion (ECF No. 1892). Those

[1] *See Vanguards of Cleveland v. City of Cleveland*, 23 F.3d 1013, 1018 (6th Cir. 1994).

pleadings in June and July 2020 were not bare-bones. *See*: the six parties' motion and brief filed June 24, 2020 (ECF Nos. 1879 and 1880); the Sault Tribe's motion and brief filed June 24, 2020 (ECF Nos. 1883 and 1884); the Sault Tribe's response filed July 8, 2020 (ECF Nos. 1887-1889); and the six parties' response filed July 8, 2020 (ECF No. 1890). This is the context in which the "reconsideration" motion must be analyzed – as part-and-parcel of the matter litigated in the summer of 2020 rather than as a stand-alone determination on November 14, 2022.[2] *Compare* the "reconsideration" motion's argument (no basis for extending the 2000 Consent Decree "over the objection of the Sault Tribe") with Sault Tribe's assertions 30 months ago:

> June 24, 2020 motion, at pages 1-2: "… applicable law does not allow certain provisions in the 2000 Consent Decree to continue after expiration of the Decree absent agreement of all five tribes." ECF No. 1882 at PageID.10677-10678.
>
> June 24, 2020 memorandum, at page 14: "Under the 1836 Treaty and other applicable law, exclusive zones cannot be imposed on the tribes absent their consent." ECF No. 1883 at PageID.10692.
>
> July 8, 2020 response, at page 5: "… the tribal exclusive zones contained in the 2000 Consent Decree cannot continue beyond expiration of the Decree absent unanimous agreement among all five tribes. " ECF No. 1887 at PageID.10771 (footnote omitted).

This Court's July 24, 2020 Opinion rejecting the Sault Tribe's contention (*see* ECF No. 1892 at PageID.10819-10820, 10822-10823) is law of the case. Any appeal or motion requesting reconsideration should have occurred at that time.

B. Injunction Elements Warrant Extension of 2000 Consent Decree

Because the effect of extending the 2000 Consent Decree is to continue an injunction restricting where Sault Tribe members may exercise "treaty-fishing" rights, elements applicable to

[2] Subsequently the 2000 Consent Decree was extended several times without objection of the Sault Tribe (*see* ECF Nos. 1903, 1912, 1945, and 1963).

Rule 65 injunctions must be considered. Summarizing these elements: the fishery resource itself and also GTB would suffer irreparable harm if the requested equitable relief is not ordered; such relief would not cause substantial harm to any other party; the balance of hardships favors extending the 2000 Consent Decree; remedies available at law are inadequate; and the public interest would be served by extending the 2000 Consent Decree.[3]

1. Extending The 2000 Consent Decree Is Necessary To Protect The Fishery Resource By Preventing A Regulatory Gap

All seven of the parties in this litigation are governmental entities with a duty to protect the fishery resource within the 1836 Treaty cession area of Lakes Huron, Michigan, and Superior. Two and a half years ago, six of the seven parties (United States, State of Michigan, and four Tribes) asserted that unless the expiration date of the 2000 Consent Decree was extended, "there will be no clearly governing framework to address issues of allocation, management and regulation of the fishery." ECF No. 1879 at PageID.10665. This concern was reiterated on several occasions including a motion filed November 15, 2021 by five parties (Bay Mills neither supporting nor objecting): "Extending the Decree an additional six months will prevent a regulatory gap from forming between the expiration date and the ratification of a successor decree, protecting the fishery resource in the interim." ECF No. 1941 at PageID.10900. Six parties continue to so stipulate.[4]

The law of the case is that a joint-tribal management/regulatory structure is necessary to

[3] *Norris v. Stanley*, 567 F. Supp.3d 818, 820 (2021)(citing *Ohio Republican Party v. Brunner*, 543 F.3d 357, 361 (6th Cir. 2008)).

[4] "[E]xtending the Decree will prevent a regulatory gap from forming between the expiration date and the ratification of the successor decree, protecting the fishery resource in the interim." ECF No. 2025 at PageID.12015.

protect the fishery resource. In fact, a "single set of comprehensive [inter-tribal] regulations" has existed continuously for the past 43 years.[5] In 1981 the Sixth Circuit mandated that these inter-tribal regulations should continue until modified by the District Court:

> The United States and the Indian tribes represent to the Court that the tribes have adopted and will carefully enforce as a regime of tribal self-regulation the comprehensive rules regarding gill net fishing previously enacted by the Secretary of the Interior which were allowed to expire on May 11, 1981. Until modified by the District Court upon remand, the comprehensive rules regarding gill net fishing previously enacted by the Secretary of Interior and referred to in our opinion reported at 623 F.2d 448 (6th Cir. 1980) and our order of July 16, 1980, will remain in effect as the interim rules regarding gill net fishing. The District Court may modify these rules on an interim basis under Rule 65, Federal Rules of Civil Procedure.

United States v. Michigan, 653 F.2d 277, at 279 (6th Cir. 1981). This ruling was at the behest of Sault Tribe. Judicial authority to modify these inter-tribal regulations does not require the parties' unanimous consent.[6] Modifications of these comprehensive rules occurred in conjunction with this Court's approval of the 1985 and 2000 decrees.[7] Similar to this Court's ruling on July 24, 2020, the Sault Tribe should have the burden of proof re: any departure from this mandate for joint inter-tribal regulations.

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[5] In response to the Sault Tribe's failure to regulate its commercial fishers subsequent to Judge Fox's May 7, 1979 declaratory judgment, the Secretary of the Interior promulgated emergency regulations on November 15, 1979, having "determined that conservation of the fishery resource within the ceded waters will be enhanced by a single set of comprehensive regulations, …" 44 Fed. Reg. 65747, at 65748 (Nov. 15, 1979), §256.40. **Exhibit 1**.

[6] For example, this Court's March 19, 1982 Opinion and Order (**Exhibit 2**) was entered over the State's objection, and Bay Mills opposed the 1985 decree.

[7] Each subsequent decree dictated contents of the joint-tribal regulations ("comprehensive rules"); *see*: ECF No. 1890-1 at PageID.10809 (1985 decree, ¶¶ 27-28, 12 I.L.R. at 3091); ECF No. 1458 at PageID.3247-3248 (2000 decree, section VI.A.); and ECF No. 2042-1 at PageID.12193-12195 (2023 proposed decree, section VI.A.).

2. Extending The 2000 Consent Decree Is Necessary To Preserve The Framework Of The May 31, 1985 Equitable Allocation Decree

The 1985 zonal plan adopted with Sault Tribe's agreement and advocacy at trial required involvement of the largest tribal participant (both by number of fishers and share of harvest) in the fishery. The same is true of the 2000 Consent Decree, which continued the zonal plan. By sheer numbers, the Sault Tribe is the backbone of the zonal plan. The entire structure of the 1985 equitable allocation would collapse if the Sault Tribe were permitted to opt out.

Additionally, without the constraints dictated by the 2000 Consent Decree, increased fishing efforts by Sault Tribe fishers within Grand Traverse Bay would cause irreparable harm to GTB. Due to the whitefish collapse, there simply are not enough fish for GTB alone; any fish harvested by outsiders would be the death knell to the local Tribe's fishers. *See* Olsen Affidavit ¶ 9 (**Exhibit 3**).

3. Continuing The Status Quo (Restrictions On Fishing Activities Mandated By 2000 Consent Decree) Would Not Cause Substantial Harm To Sault Tribe

Analyzing potential hardship of granting the requested extension requires this Court to consider the allocation of fish harvests to which the Sault Tribe would be entitled in the absence of the State-Tribal allocation agreement embodied within the 2000 Consent Decree (and proposed 2023 decree).

(a.) Benchmark allocation formula absent consent of parties to replacement decree

Despite statements in previous decisions interpreted by representatives of the Sault Tribe as warranting an allocation to the Tribes of all available fish "to the full extent necessary to meet

the tribal members' needs"[8], other parties concur that the benchmark should be a "50-50" formula generally applicable under common law.

> The logic of the 50% ceiling is manifest. For an equal division – especially between parties who presumptively treated with each other as equals – is suggested, if not necessarily dictated, by the word "common" as it appears in the treaties. Since the days of Solomon, such a division has been accepted as a fair apportionment of a common asset, and Anglo-American common law has presumed that division when, as here, no other percentage is suggested by the language of the agreement or the surrounding circumstances. *E.g.*, 2 American Law of Property § 6.5, p. 19 (A. Casner ed. 1952); E. Hopkins, Handbook on the Law of Real Property § 209, p. 336 (1896).

Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n ("Fishing Vessel"), 443 U.S. 658, 686 fn. 27 (1979).

In a decision governing regulation of hunting and allocation of deer and various furbearer harvest between treaty and non-treaty users under Chippewa treaties of 1837 and 1842, Judge Crabb in the Western District of Wisconsin arrived at the same conclusion:

> Throughout this litigation defendants have been arguing the applicability of *Fishing Vessel*, 443 U.S. 658, 99 S. Ct. 3055, insofar as it stands for an equal distribution of harvest between Indian and non-Indian groups. I have resisted the suggestion because of my concern about the differences between the circumstances of this case and those in the state of Washington. Although I continue to believe that those differences are significant, I have become convinced that the approach taken by the Court in that case directs the basic approach that must be taken here: an equal division of the natural resources that are the subject of the treaty. That is the fairest result, and the inevitable one, whatever analysis is employed. As in *Fishing Vessel*, plaintiffs' needs for a moderate standard of living dictate their right to a full share of the harvest, *subject to a ceiling set at 50% to prevent the frustration of the non-Indian treaty right.*
>
> Therefore, I will allocate the resources at issue here equally between the two groups, Indian and non-Indian.

[8] *United States v. Michigan*, 505 F.Supp. 467, at 472 (W.D. Mich. 1980).

Lac Courte Oreilles Band of Lake Superior Chippewa Indians, et al., v. Wisconsin, 740 F. Supp. 1400, 1417-18 (W.D. Wisc. 1990) (emphasis added). In 1985 this Court likewise noted *Fishing Vessel's* "standard for determining appropriate allocation." *United States v. Michigan*, 12 I.L.R. 3079, at 3080 (W.D. Mich. May 31, 1985) (ECF No. 1890-1 at PageID.10798).

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(b.) Law of the case -- "shared" resource

Similar to the Wisconsin court's 1990 decision, this Court's only equitable allocation decision was premised upon the shared fishery resource precept:

> While the Treaty, as interpreted by this court, protects tribal fishing rights, the resource is shared by other user groups.
>
> One of the immediate problems presented, then, in 1979 and in the years which followed was and is how to share this treasured resource without diminishing or depleting it, and within the legal rights of the competing users.

Id., 12 I.L.R. at 3079 (ECF No. 1890-1 at PageID.10797); *see also* discussion at 3080-81 (PageID.10798-10799) re: "court's powers as a court of equity" to make an equitable determination as to which tribal plan "accommodates and protects the interests of all concerned to the extent possible."

(c.) Premise of the 2000 (and proposed 2023) Great Lakes fishing decrees

The Lake Trout Management section of the 2000 Consent Decree states in VII.A.4. at page 41 (ECF No. 1458 at PageID.3256): "Lake trout shall be allocated approximately equally between the State and the Tribes, though the precise allocation varies from one area to another."[9] Other species were not – and under the proposed 2023 decree are not – subject to allocation formulas

[9] Similar language is included in section VII.A.7. at page 31 of the proposed 2023 decree, *see* ECF No. 2042-1 at PageID.12201.

due to the basic framework of the overall zonal plan: that whitefish (the mainstay of the Great Lakes' commercial fishing industry) would primarily be allocated to the Tribes; that the Tribes would forgo commercial fishing in areas important to the State's tourism/recreational fishing interests; and that particular "sports" species would remain "off-limits" to tribal commercial fishers.[10] That this framework resulted in slightly better than an overall "50-50" allocation to the Tribes was an inducement the State was willing to extend in order to achieve its goals in the zonal plan.[11]

(d.) Previous positions of the United States as trustee for the 1836 Treaty Tribes

The stated policy position of the United States vis-à-vis allocation of the fishery reflects the decisions noted in Section 3, *supra* at pages 6-8. Consider:

(1.) July 26, 1979 Memorandum[12] (DOI Associate Solicitor-Indian Affairs), at page 3: "It should not be difficult to convince the tribes to accept a 50-50 apportionment of the resource as a regulatory goal, and then to pursue that goal both in court and in the regulations to be adopted by the tribes."

(2.) 1979-81 federal regulations: 44 Fed. Reg. 65747, at 65748 (Nov. 15, 1979), §256.40 (**Exhibit 1**): "purpose of these regulations is to assure the conservation of the fishery resources …

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[10] The 2000 Consent Decree section VIII.C.2. entitled "Species Not Authorized for Commercial Harvest" (ECF No. 1458 at PageID.3288-3289) is continued verbatim in the proposed 2023 decree, *see* section VIII.J. (ECF No. 2042-1 at PageID.12206).

[11] It must be emphasized that notwithstanding prohibitions re: commercial fishing, tribal subsistence fishing remains open throughout the entire cession area including for these "off-limits" species, *compare* the 2000 Consent Decree section XII.D. (ECF No. 1458 at PageID.3303-3304) with the proposed 2023 decree section XI.D. (ECF No. 2042-1 at PageID.12209-12210).

[12] A copy of this memorandum (**Exhibit 4**) is contained in and was obtained from the public case file in the Grand Traverse County Circuit Court in *Grand Traverse Area Sport Fishing Association v. Clarence Maudrie*, *et al*., Docket No. 79-7510-CE.

for the present and future use and enjoyment of the members of the Indian tribes regulated hereby and other persons entitled to participate in the fishery, …"

(3.) 45 Fed. Reg. 28100, at 28101 (April 28, 1980), §256.40: "purpose of these regulations is to assure conservation of the fish resources … for the continued use and enjoyment of Indian tribes regulated hereby and all other persons entitled to use the resources, and to prevent the deterioration thereof."

(4.) "Brief For The United States Regarding The Court's Power To Allocate The Fishery Between The Plaintiff Tribes And The State," filed January 6, 1984 (Docket No. 634), at page 6: "The Indian and non-Indian fishermen are in competition for the same resource. If the non-Indians catch too many fish, they may frustrate the treaty right of the Indians. If the Indians take too many fish, they may frustrate the just interest of non-Indians in the fishery. The question is essentially one of fact and of equity."

(e.) Allocation among the Tribes

Assessment of the Sault Tribe's presumed reasons for seeking relief from the restrictions of the 2000 Consent Decree requires some examination of the current actual proportionate share of the available harvest by competing user groups, and what each might be entitled to under applicable law.

(1.) Tribal or individual tribal members' right?

Critically,

> [t]he fishing right reserved by the Indians in 1836 and at issue in this case is the communal property of the tribes which signed the treaty and their modern political successors; *it does not belong to individual tribal members*.

United States v. Michigan, supra, 471 F. Supp. at 271-72 (emphasis added and citations omitted); *see also* paragraph 16 of the declaratory judgment (471 F. Supp. at 280).

(2.) Inter-tribal allocation absent consent of parties to replacement decree

The Sault Tribe has a greater share under the 2000 Consent Decree (and proposed 2023 decree) than it would be entitled to if this Court were requested to determine a formula by which the fishery resource within the 1836 Treaty cession area of Lakes Huron, Michigan and Superior should be allocated between the five Tribes. Presumably the Sault Tribe would disagree with the assertion that each Tribe is entitled to an equal share, contending that their total membership and relative share of the overall tribal fishery warrant a greater allocation than the other Tribes. However, the common law noted by the Supreme Court with respect to allocation of resources among sovereigns applies equally to allocation among tribal sovereigns as it does to an overall allocation between the State and Tribes collectively:

> Since the days of Solomon, such a division [an equal division] has been accepted as a fair apportionment of a common asset, and Anglo-American common law has presumed that division when, as here, no other percentage is suggested by the language of the agreement or the surrounding circumstances.

Fishing Vessel, supra, 443 U.S. at 686 fn. 27 (citations omitted).

Fishery biologists for the tribal, state, and federal parties concur that the zonal plan in the 2000 Consent Decree has in practice resulted in the Tribes harvesting slightly more than 50% of the total fish.[13] The Sault Tribe has acknowledged to this Court that its fishers currently harvest two-thirds[14] of the communal share that the five Tribes are entitled to under common law. Using the 2019 allocation percentage, the Sault Tribe currently enjoys an allocation of two-thirds of almost 60%, *i.e.*, approximately 40% of <u>all</u> harvests (tribal and state) within the 1836 Treaty cession waters. Compared to the common law formula of one-fifth (20%) of the Tribes' 50%

[13] Olsen Affidavit ¶ 11 (**Exhibit 3**).

[14] ECF No. 1887 at PageID.10772-10773.

communal share (*i.e.*, 10% of all harvests), the Sault Tribe is far better off under the "constraints" of the 2000 Consent Decree terms than the alternative of a court-ordered allocation formula.

Currently there is no need for inter-tribal allocation under the common law formula.[15] But if inter-tribal allocation were required, the provision contained in the "inland" consent decree approved by court order on November 2, 2007 (ECF No. 1799) provides an appropriate model:

> 17.4 For any species subject to allocation under this Section XVII, or for any species determined in the future to require allocation, each Tribe shall be entitled to one-fifth of the Tribal allocation, provided that the Tribes shall develop mechanisms to share the available Tribal harvest when a Tribe is unable to fully utilize its one-fifth share. (ECF No. 1799, page 41 of 67)

The point being that the Sault Tribe cannot establish the requisite showing of harm that would result from extension of the 2000 Consent Decree (or from implementation of proposed 2023 decree). In fact, the opposite is true: the Sault Tribe is able to harvest more fish under the framework of the 2000 Consent Decree (and proposed 2023 decree) than it would be entitled to if inter-tribal allocation were litigated under precedent of Anglo-American common law.

4. The Sault Tribe Has Not Demonstrated Likelihood Of Success On The Merits

Almost 40 years after joining the November 14, 1983 motion requesting an "equal division" of the fishery resource with the cession area,[16] Sault Tribe asserts a position inconsistent with the 1985 equitable allocation ruling previously determined to be law of the case, *see* July 24, 2020 Opinion at pages 5-6 (ECF No. 1892 at PageID.10822-10823).

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[15] Olsen Affidavit ¶ 13 (**Exhibit 3**).

[16] "Motion to Allocate Resource," Dkt. No. 621 (filed November 14, 1983), *see* memorandum at p. 5. **Exhibit 5**.

The Sault Tribe was signatory to the March 28, 1985 Agreement For Entry Of Consent Decree and advocated for its entry as an order of this Court during the five-day trial resulting in the 1985 equitable allocation decree. *United States v. Michigan*, *supra*, 12 I.L.R. at 3089-3093 (ECF No. 1890-1 at PageID.10797-10811). The Sault Tribe continues to benefit from this equitable allocation under the 2000 Consent Decree, *supra* at pages 11-12. Thus Sault Tribe cannot demonstrate likelihood of success on the merits. Essentially this case is in the same posture as 30 months ago: "the Sault Ste. Marie Tribe has not met the burden of proof necessary for the Court to modify any provisions of the Decree outside of its expiration date." July 24, 2020 Opinion at page 6 (ECF No. 1892 at PageID.10823).

5. Granting The Extension Motion Would Serve The Public Interest

The public interest would be served by continuing the status quo, *i.e.*, extending the terms of the 2000 Consent Decree. Six of the seven parties concur that an extension is necessary to protect the fishery resource by preventing a regulatory gap.[17] *See* July 24, 2020 Opinion at pages 4-5 (ECF No. 1892 at PageID.10821-10822); *see also* November 14, 2022 Order Extending The 2000 Great Lakes Fishing Consent Decree (ECF No. 2027 at PageID.12020).

The public interest additionally would be served by effectuating federal policy articulated in the October 5, 2021 Decision Memorandum ("The Department's longstanding view is that the integrity of inter-tribal fish and wildlife commissions like CORA is important to the exercise of the Department's trust responsibility to all affected tribes.") **Exhibit 6**. *See also* March 12, 1986

[17] *See* ECF No. 2025, PageID.12015 ("[E]xtending the Decree will prevent a regulatory gap from forming between the expiration date and the ratification of the successor decree, protecting the fishery resource in the interim.").

Memorandum to the BIA Area Director from the DOI Assistant Secretary-Indian Affairs. **Exhibit 7**.

Conclusion

This Court is not obligated to rule on the Sault Tribe's "reconsideration" motion. No new grounds are presented as required by W.D. Mich. LCivR 7.4(a); nor is the motion timely under Fed. R. Civ. P. 59(e) because in effect it is requesting reconsideration of this Court's July 24, 2020 Opinion (ECF No. 1892). However, given yet another tactical change reflected in the Sault Tribe's February 10, 2023 motion (instead of anticipated objection), an interlocutory appeal now seems less likely; thus deferring ruling may not be necessary.

The parties have coexisted peacefully under the zonal plan implemented by this Court's May 31, 1985 equitable allocation decision, and the Tribes collectively have benefited from an overall allocation exceeding the common law benchmark. Six of the seven parties are content with this arrangement (1985 zonal plan); and none other than the Sault Tribe quarrels with this Court's observation at page 6 of the July 24, 2020 Opinion:

> Judge Enslen made a number of findings in support of the exclusive fishing zones, ultimately concluding that a zonal plan "provides for greater availability and predictability, greater harvests for treaty fishers, without the obvious social conflict, early closures, ineffective enforcement and management, and without the uncertainty [of other plans]."

ECF No. 1892 at Page.ID 10823 (citing *United States v. Michigan*, *supra*, 12 I.L.R. at 3085 (ECF No. 1890-1 at Page.ID 10803)). This begs the question: is the Sault Tribe free to ignore the law of the case or constrained to live within its framework?[18]

[18] The Sault Tribe's February 10, 2023 motion prompts the question whether judicial estoppel precludes the Sault Tribe from abandoning both the zonal plan framework of the May 31, 1985 equitable allocation decree as well as the commitment to joint-tribal "treaty fishing" regulations.

Respectfully submitted,

GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

Dated: February 10, 2023

By: /s/ William Rastetter

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.3(b)(i)

This Brief complies with the word count limit of L. Ci. R. 7.3(b)(i). This brief was written using Microsoft Word version 2019 and has a word count of 4,161 words.

Respectfully submitted,

GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS

Dated: February 10, 2023

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CERTIFICATE OF SERVICE

I, Karla Gerds, hereby certify that on the 10th day of February, 2023, I electronically filed the foregoing document with the ECF system which will send a notification of such to all parties of record.

By: /s/ Karla Gerds

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