

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

UNITED STATES, et al.,

Plaintiffs,

v.

STATE OF MICHIGAN, et al.,

Defendants.

Case No. 2:73- cv- 26

HONORABLE PAUL L. MALONEY

REQUEST FOR ORAL ARGUMENT

**MOTION OF THE SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS TO AMEND
2000 CONSENT DECREE, OBJECTION TO THE PROPOSED NEW CONSENT
DECREE AND FOR A FRCP 16 PRETRIAL CONFERENCE AND MEMORANDUM OF
SUPPORT AND REQUEST FOR AN ORAL ARGUMENT**

Pursuant to Fed. R. Civ. P. 7(b), 16, W.D. Mich. LCivR 7 and 16.1, and Fed. R. Civ. P. 26, Plaintiff-Intervenor Sault Ste. Marie Tribe of Chippewa Indians (“Sault”) moves for modification of the 2000 Consent decree (ECF No. 1458, PageID 3216) and a case planning conference to develop a proposed scheduling and case management order as may be necessary in this case, and to consider the matters referred to in Fed. R. Civ. P. 16(c) and 26(f). Sault also objects to numerous provisions of the decree proposed by the State of Michigan.

As the Court is aware, this case has been pending for some time while the parties engaged in extensive negotiations to determine what terms would govern the conduct and management of the fishery in the 1836 Treaty area of the Great Lakes. The Consent Decree currently in force was to expire on November 14, 2022. (September 28, 2022, Order of the

Court, ECF No. 2014, PageID 11957), but has now been extended indefinitely. Order of the Court, ECF No. 2027, Page ID 12022, Nov. 14, 2022.

Tribal and State fisheries proceeded in the past 20 years under the Consent Decree of August 8, 2000. Although that decree was a well-intentioned attempt to implement the Treaty of 1836, changed circumstances and facts rendered it inadequate to protect and implement the Treaty fishing rights of the five Tribes involved in the case.

The United States Supreme Court notes that consent decrees may be modified by the District Court even without the consent of all the original parties, under appropriate circumstances. *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 393 (1992). This rule is based partially on Fed. R. Civ. P. 60 (Relief from Final Judgment). In *Rufo*, the court held that the existence of changes in original conditions could support a modification. 502 U.S. at 393. Modification of a consent decree requires a complete hearing and findings of fact. *Vanguards of Cleveland v. Cleveland*, 23 F.3d 1013, 1017 (6th Cir. 1994).

A new decree or governing framework needs to be concluded to provide for protection and conservation of the fishery resource and implementation of the Treaty rights of the affected tribes.

The parties diligently engaged in negotiations attempting to formulate a new or modified decree. Despite intensive effort, however, it proved unworkable for a new decree to be formulated. Although some parties seem to be in agreement, Sault Ste. Marie has not achieved an acceptable proposal. Thus, the Sault Ste. Marie Tribe of Chippewa Indians requests that all necessary procedures under Federal Rules of Civil Procedure be initiated and concluded to allow the matter to be tried. The Court has noted on numerous occasions the need for there to be a “governing framework in place to protect the rights of the parties.” *E.g.*, Order Extending

Consent Decree, Nov. 29, 2021, ECF No. 1945, PageID 10910. We concur and also seek such a framework.

Plaintiff-Intervenor also requests that a case management order include a provision that any party who wishes to do so may file a document entitled “More Definite Statement,” as contemplated by Fed. R. Civ. P. 12(e), to clearly specify and explain the claims and relief desired by that party. Any party who wishes to do so should be allowed to respond.

At this point, substantive matters include significant opportunity to fish on all species, opening of significant closed areas, renewal of gear restrictions, better data collection including accurate harvest numbers by Michigan anglers, environmental protection, and recognition of tribal self-regulation.

Current proposals filed with court by other parties do not meet these needs. The detailed needs are as outlined in the Sault Objections to The Proposed New Consent Decree of the other parties ECF No. 2077. These objections are also attached hereto and incorporated herein by reference.

The grounds for seeking this order are the changed circumstances which demonstrate that the 2000 Consent Decree produced very negative consequences for the Sault Tribe. The Sault Tribe has approximately 44,000 members for whom fishing is a critical issue. Economic data indicates that in the past 20 years, the Sault fishing fleet of “large” vessels has decreased from 80 to 20.

The number of fish harvested has dropped by over 50%.

The poverty level of Tribal members continues at a higher rate than non-tribal members.

Per capita income is far below that of non-Indian citizens.

Unemployment remains at a level much higher than non-Indian citizens.

Thus, this court's rulings that the Treaty right to maintain a way of life, the right to protect the homeland, as well as the opportunity to make a moderate living, have not been achieved. To implement the Treaty of 1836 and restore its promise that the tribes would be able to maintain their way of life, substantial modifications to the current management framework for the fishery are needed. Therefore, Sault Ste. Marie Tribe of Chippewa Indians moves to amend the decree and requests a FRCP 16 planning conference to establish a timeline to prepare the matter for trial as well as other matters required under the Federal Rules of Civil Procedure.

Matters to be considered at the planning conference include:

- a pretrial schedule;
- discovery schedule;
- deposition motions deadline;
- motions in limine deadline;
- exchange of witness and such other matters necessary to assist the court.

A proposed scheduling order is attached and incorporated herein by reference.

Respectfully submitted this 10th day of February, 2023.

s/ Mason D. Morisset

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CERTIFICATE OF COMPLIANCE

I certify that in compliance with W.D. Mich. LCivR 7.3(b)(i), I used Microsoft Word 2010 to calculate that there are 892 words contained in this Motion.

DATED: February 10, 2023, at Seattle, Washington.

s/Mason D. Morisset
Mason D. Morisset

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2023, I electronically filed the foregoing document with the Clerk of Court using the ECF system which will send notification of such filing to all counsel of record.

s/ Mason D. Morisset

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