No. 23-1931

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

and

BAY MILLS INDIAN COMMUNITY, GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS, LITTLE RIVER BAND OF OTTAWA INDIANS, LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS,
Intervenors-Appellees,

and

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS,
Intervenor-Appellant,

v.

STATE OF MICHIGAN, and its agents,
Defendants-Appellees.

Appeal from the U.S. District Court for the Western District of Michigan,
No. 2:73-cv-26 (Hon. Paul L. Maloney)

UNITED STATES' RESPONSE BRIEF

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STATEMENT REGARDING ORAL ARGUMENT

When this case was last before this Court, the Court observed that "the district court has done a good job managing this difficult and complex case." *United States v. Michigan*, 68 F.4th 1021, 1029 (6th Cir. 2023). The district court has continued to do so, notwithstanding opposition from Appellant Sault Tribe Sault Ste. Marie Tribe of Chippewa Indians (and amicus curiae Coalition to Protect Michigan Resources, as reflected in the companion appeal *United States v. Michigan*, No. 23-1944). Because of the breadth and complexity of the issues raised in this appeal, the United States requests pursuant to 6th Cir. R. 34(a) that the Court hold oral argument to aid the Court's resolution of this case.

INTRODUCTION

Since 1985, a series of comprehensive management decrees have governed fishing in waters of the Great Lakes ceded by Tribes to the United States in the 1836 Treaty of Washington. Beginning in 2019, the Sault Tribe of Ste. Marie Chippewa Indians ("Sault Tribe"), four other Tribes, the State of Michigan, the United States, and amici sportfishing groups conducted three years of painstaking negotiations to develop a new management decree ("2023 Decree"). Among other things, the 2023 Decree addresses environmental changes that have occurred in the Great Lakes since the last decree in order to safeguard the sustainability of the resource in the years to come, and also honors tribal treaty rights.

After participating in party negotiations to help craft the Decree's terms, Sault Tribe objected to the district court entering the new Decree. The district court—consistent with procedures followed when Sault Tribe and others successfully sought to enter a past decree over a different Tribe's objections to the past decree—provided Sault Tribe with ample opportunity to litigate its objections to the 2023 Decree. The district court rejected the Tribe's objections in a comprehensive 139-page opinion, and then entered the Decree based on its continuing jurisdiction over the case and equitable authority to manage the fishery.

In this appeal, Sault Tribe abandons nearly all the arguments it raised in its objections to the 2023 Decree in the district court, and seeks reversal of the district

court's entry of the Decree primarily based on inapplicable procedural arguments. Sault Tribe newly argues that the district court failed to follow the appropriate procedures for entering the 2023 Decree as an injunction, but this forfeited argument conflicts with the Tribe's own prior litigating positions and contravenes the law of the case. Sault Tribe then argues at length a contrary hypothesis that the district court failed to follow the appropriate procedures and standards for entering the 2023 Decree as a consent decree. But the Tribe recognizes that the Decree is not a consent decree, and nevertheless the district court's entry of the Decree complies with procedures and standards for entering consent decrees. The Tribe also attempts to challenge a terminated extension of a prior management decree, but that challenge is moot and, in any event, the district court did not abuse its discretion in granting the extension.

Ultimately, Sault Tribe seeks through this appeal to upset a successful nearly forty-year-old system of fishery regulation among separate sovereigns in the Great Lakes. But Sault Tribe misses that—per the district court's extensive and unchallenged findings—the 2023 Decree protects and preserves treaty fishing rights, including Sault Tribe's treaty rights, and safeguards the sustainability of the fishery for the next twenty-four years. Granting Sault Tribe the relief it seeks would put the fishery at risk by upsetting the longstanding process for fishery

management, and would significantly prejudice the other four party Tribes that seek to preserve their treaty rights by fishing pursuant to the 2023 Decree.

The Court should reject Sault Tribe's arguments and affirm the judgment of the district court.

STATEMENT OF JURISDICTION

(A) The district court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1345, and 1362, because the United States' and Tribes' claims arise under the laws, treaties, and constitution of the United States. *United States v. Michigan*, 471 F. Supp. 192, 217 (W.D. Mich. 1979).

(B) This Court has jurisdiction over Sault Tribe's appeal from the district court's Order Adopting the 2023 Great Lakes Fishing Decree, RE 2131, PageID#15234, because the order was immediately appealable by a party as a final judgment, 28 U.S.C. § 1291. The Court lacks jurisdiction over Sault Tribe's appeal from the district court's Order Extending the 2000 Great Lakes Fishing Consent Decree, RE 2027, PageID#12020, because a challenge to the extension of the 2000 Decree is moot. The extension is no longer in effect and cannot be reinstated. *See Libertarian Party of Ohio v. Blackwell*, 462 F.3d 579, 584 (6th Cir. 2006).

(C) The district court issued its Order Adopting the 2023 Great Lakes Fishing Decree, RE 2131, PageID#15234, on August 24, 2023. Sault Tribe filed

its Notice of Appeal, RE 2138, PageID#15381, on October 16, 2023. The appeal is timely under Fed. R. App. P. 4(a)(1).

STATEMENT OF THE ISSUES

1. Whether the district court appropriately entered the 2023 Decree over the objections of Sault Tribe, given that:
   a. the 2023 Decree is a judicial decree entered pursuant to the district court's continuing jurisdiction and equitable authority;
   b. the 2023 Decree is not an injunction, and Sault Tribe is barred from arguing that it is; and
   c. the 2023 Decree is not a consent decree, but it still complies with standards for entering one.
2. Whether Sault Tribe can challenge the district court's seventh extension of the 2000 Decree, when:
   a. a challenge to the extension is moot; and
   b. the extension was necessary to protect the fishery and the treaty right.

STATEMENT OF THE CASE

A. Historical background and the 1979 Decree

This case dates back to the 1836 Treaty of Washington, March 28, 1836, 7 Stat. 491, in which the Ottawa and Chippewa Tribes ceded nearly all of their

territory, including much of Lake Michigan, Lake Superior, and Lake Huron, to the United States. *Michigan*, 471 F. Supp. at 231–32. However, the Ottawa and Chippewa reserved, among other things, the "right to fish off-reservation in the ceded area." *Id*. at 279; *see* 1836 Treaty, art. 13, 7 Stat. 491. Prior to the Treaty, the Ottawa and Chippewa had historically fished in the Great Lakes with gillnets, *Michigan*, 471 F. Supp. at 222, which are nets "suspended vertically in the water, whose meshes catch entering fish by the gills," The Random House College Dictionary (Revised ed. 1980).

In 1973, the United States brought suit on behalf of the Bay Mills Indian Community ("Bay Mills"), a successor to the signatories of the 1836 Treaty, to prevent the State of Michigan's ("the State") fishing regulations from interfering with the treaty right to fish in waters ceded under the 1836 Treaty. *Michigan*, 471 F. Supp. at 203. Bay Mills intervened as plaintiff in 1974, and in 1975 Appellant Sault Tribe intervened as another successor to the Treaty signatories. *Id.* at 204. The Grand Traverse Band of Ottawa and Chippewa Indians ("Grand Traverse"), the Little Traverse Bay Bands of Odawa Indians ("Little Traverse"), and the Little River Band of Ottawa Indians ("Little River"), also successors to the signatories of the 1836 Treaty, later intervened as plaintiffs after they became federally-recognized Tribes.

After holding a trial, the district court found that the 1836 Treaty reserved to the Tribes a broad communal right to fish in the ceded waters of Lakes Superior, Huron, and Michigan, and that the State did not have any right to regulate tribal fishing. *Id.* at 249-74. In its "Declaratory Judgment and Decree" ("1979 Decree"), the court provided that it would "retain[] jurisdiction of this case for the life of this decree to take evidence, to make rulings and to issue such orders as may be just and proper upon the facts and law, and in the implementation of this decree." *Id.* at 278-81.

Although the district court had declared the scope of the treaty right, it did not impose regulations governing the fishery or replace existing state fishery regulations. The State appealed and obtained a stay of the 1979 Decree pending appeal, leaving in place existing state regulations of tribal fishing. *See United States v. Michigan*, 623 F.2d 448, 449 (6th Cir. 1980). In response, the United States issued comprehensive regulations governing tribal fishing, including gillnetting, and sought to vacate the stay. *United States v. Michigan*, 653 F.2d 277, 279 (6th Cir. 1981); *see* Off-Reservation Treaty Fishing; Great Lakes and Connecting Waters in Michigan Ceded in Treaty of 1836, 44 Fed. Reg. 65,747 (Nov. 15, 1979).[1]

[1] The Secretary of the Interior is empowered to promulgate regulations concerning treaty fishing at off-reservation locales under the Secretary's general authority over

This Court remanded for the district court to determine whether, even assuming the State had a right to regulate tribal fishing, the newly issued federal regulations preempted the State's preexisting fishery regulations. *United States v. Michigan*, 623 F.2d 448, 449-50 (6th Cir. 1980). But during the remand, the federal regulations lapsed. *See Michigan*, 653 F.2d at 278. The State then issued emergency regulations governing gillnet fishing within the treaty waters, and moved to vacate this Court's remand order and reverse the original judgment of the district court. *Id.*

This Court heard reargument of the State's appeal and modified its remand order, recognizing that the Tribes had a federally protected right under the 1836 Treaty to fish in ceded waters of the Great Lakes, including "rights to engage in gill net fishing." *Id.* at 278. But the Court also clarified that the State retained a limited power to regulate tribal fishing in the treaty waters to promote conservation, pursuant to the standard announced by the Michigan Supreme Court in *People v. LeBlanc*, 399 Mich. 31 (1976). *Michigan*, 653 F.2d at 279.[2] Because the State did not carry the burden to impose its proposed emergency gillnet regulations, the Court ruled that the lapsed federal regulations, which the Tribes

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Indian affairs when "necessary to assure the conservation and wise utilization of the fishery resources." 25 C.F.R. § 249.2(a).

[2] *People v. LeBlanc* largely adopts the standard for a state's regulation of off-reservation fishing rights from *Puyallup Tribe v. Department of Game*, 391 U.S. 392 (1968).

had adopted, would "remain in effect as the interim rules regarding gill net fishing." *Id.*

Back on remand, the parties entered negotiations to draft new regulations to replace the federal regulations left in place by this Court. *See* Op., RE 2076-1, PageID#12801. After the parties failed to reach an agreement, Sault Tribe, Bay Mills, and Grand Traverse moved to implement regulations proposed by the Chippewa-Ottawa Treaty Fishery Management Authority, an intertribal governing body. *Id.* The district court found that the proposed regulations were effective and would protect the resource, and entered them for the 1982 fishing season over the objections of the State. *See id.* at PageID#12802-03. In the 1983 fishing season, the district court entered stipulated regulations governing both tribal and state (non-tribal) fishers. *See* Op., RE 2080-1, PageID#12883.

B. The 1985 Decree

Following this year-to-year entry of fishery regulations, Sault Tribe, Bay Mills, and Grand Traverse moved to allocate the resource—or rather to divide the fishery's harvest—between state and tribal fishers. Mot. Allocate 1-3, Sault App. 61-63; *United States v. Michigan*, 12 Indian L. Rep. 3079 (W.D. Mich. 1985). Over the State's objections, the district court held that it could allocate the fishery based on its continuing jurisdiction under the 1979 Decree and its inherent equitable authority. Op., RE 2080-1, PageID#12890-91.

At the behest of the court, the parties began negotiating fishery allocation with a court-appointed special master. *See Michigan*, 12 Indian L. Rep. at 3079. They initially reached an agreement and jointly presented a management decree allocating the fishery to the district court, effective for fifteen years, which the district court entered ("1985 Decree"). *See id.* at 3080. The 1985 Decree was the first comprehensive regulatory framework governing state and tribal fishing in the treaty waters. Among other things, it established a "zonal" management framework identifying portions of the treaty waters open to tribal fishing, state fishing, or both. *See id.* at 3089-91. It also recognized various regulatory authorities that would cooperatively manage the fishery. *Id.* at 3091-93.

However, Bay Mills reversed course and objected to the district court entering the Decree. It proposed a different "50-50 allocation proposal," which sought to split the fishery's harvest between the State and the Tribes without a zonal framework. *Id.* at 3080. In response, the court ordered a "bifurcated hearing" to determine whether to enter (1) the parties' original 1985 Decree, (2) the Bay Mills allocation proposal, or (3) neither. *Id.* The parties and amici had "the opportunity to brief all issues, submit proposed findings of fact and conclusions of law, file stipulations of fact, present evidence, and make oral arguments." *Id.* Only if the court failed to choose one of the two allocation plans before it would it have held "a full trial on the allocation issue." *Id.*

In adjudicating the competing allocation plans before it, the court relied on *Washington v. Washington State Commercial Passenger Fishing Vessel Association* ("*Fishing Vessel*"), 443 U.S. 658 (1979), which "endorse[d] the court's power to allocate a fishery in order to effectuate a treaty," *Michigan,* 12 Indian L. Rep. at 3080. The court also relied on its "powers as a court of equity," *id.* (citing *United States v. Washington*, 520 F.2d 676 (9th Cir. 1976)), which the court found required it to "protect[] the interests of all concerned to the extent possible," *id.* at 3081.

The court listed fifteen factors relevant to making an equitable determination allocating the fishery:

> Preservation and conservation of the resource; impact of the plans on all three tribes; consistency of the plan with the tribal right to fish and the recognition that the resource is shared; reduction of social conflict; feasibility and methods of implementation; protection of Indian fishermen from discrimination in favor of other classes of fishermen; proximity; access; species of fish stocks available; harvestability of fish stocks; the economic impact on Indian fishermen; stability of the fishery; contaminant levels; management and marketing concerns; and flexibility versus predictability of the fishery.

Id. It stressed that it would not give each factor equal weight, and that its "paramount concern" was to "reach a fair and equitable decision in keeping with the reserved rights of the tribal fishermen and the preservation of the resource." *Id.*

The district court weighed the competing attributes of the allocation plans before it and how each plan would affect the fishery resource and the treaty right.

Id. at 3081-89. Ultimately, the court rejected the Bay Mills's allocation plan and entered the zonal plan that the parties had previously agreed on for the next fifteen years, over the objections of Bay Mills. *Id.* at 3089, 3093. The court held that "[a]s a court of equity, I am compelled to conclude that the [1985 Decree] plan is in the best interests of all tribes involved, specifically including Bay Mills." *Id.* at 3088.

C. The 2000 Decree

The seven parties began negotiating a successor to the 1985 Decree in 1998. *See* Order, RE 1378, PageID#4175. To prevent a regulatory gap in the fishery in the event the 1985 Decree lapsed during negotiations, the district court ordered that either the 1985 Decree or regulations promulgated pursuant to the 1985 Decree would govern in the interim. *See* Order, RE 1441, PageID#3555-56.

In August 2000, the parties stipulated to a successor decree ("2000 Decree"). Stip., RE 1457, PageID#3406-09. The 2000 Decree built on the 1985 Decree's zonal management plan by, among other things, setting harvest limits—caps on the total number of fish to be harvested—for the two primary commercial fish species in the Great Lakes. 2000 Decree, RE 1458, PageID#3220, 3255, 3265. It allocated Lake Trout harvest roughly equally between state fishers and tribal commercial fishers, *id.* at PageID#3256, and allocated Whitefish harvest primarily to tribal commercial fishers, *id.* at PageID#3267-69. Given social conflict between

state and tribal fishers, as well as changes in the resource, the Decree also adjusted the zones where tribal fishers could use gillnets, and promoted tribal fishers' use of trap nets, which are more selective fishing devices than gillnets. *Id.* at PageID#3224-41; *see* Caroffino Aff., RE 2084-1, PageID#12995.

On the factual showings set forth in the parties' stipulation, the district court accepted the 2000 Decree and entered it for twenty years. *See* 2000 Decree, RE 1458, PageID#3216. The court entered the 2000 Decree as a "consent decree" because all parties consented to its entry. *Id.* The Decree also provided that the district court would "retain continuing jurisdiction over this case for purposes of enforcing this Decree." *Id.* at PageID#3336.

D. Negotiations and extension of the 2000 Decree

In September 2019, the parties began negotiating another successor decree to replace the 2000 Decree, which was set to expire in August 2020. *See* Stip., RE 1876, PageID#2146. In March 2020, the district court appointed the Honorable Michael Cavanagh, the former Chief Justice of the Michigan Supreme Court, as mediator. *Id.* at PageID#2147. Sault Tribe participated in regularly scheduled mediation and unmediated negotiations. *See* Order, RE 1892, PageID#10819; Order, RE 1985, PageID#11670-71.

Because of the complexity of negotiating issues that had arisen over the past twenty years and delays related to the COVID-19 pandemic, it became clear that

the district court would be unable to enter a successor decree before the 2000 Decree's expiration date. *See* Mot., RE 1879, PageID#10664. In June 2020, in order to avoid a regulatory gap in the fishery, all parties requested an extension of the 2000 Decree. Sault Tribe requested an extension until November 6, 2020, Mot., RE 1883, PageID#10685, and the other six parties requested an extension until December 31, 2020, Mot., RE 1879, PageID#10664.[3] The district court granted the longer extension. Order, RE 1892, PageID#10818.

Sault Tribe continued to participate in negotiations and joined other parties in moving for two more six-month extensions of the 2000 Decree. *See* Order, RE 1901, PageID#10836-39; Order, RE 1909, PageID#10850-53. Sault Tribe did not oppose another six-month extension, Order, RE 1945, PageID#10909, and joined the other parties in obtaining a further three-month extension, Order, RE 1963, PageID#10934. The court often granted these extensions after status conferences where the parties offered oral testimony on the need for the extensions. *See, e.g.*, Mins., RE 1911, PageID#10857; Mins., RE 1938, PageID#10896.

In September 2022, Sault Tribe requested an extension of the 2000 Decree until December 29, 2022, Mot., RE 2006, PageID#11925, while the other parties

[3] Sault Tribe only opposed the other parties' motion to the extent that it kept in place the 2000 Decree's exclusive tribal fishing zones—areas where only one or two Tribes are allowed to fish—beyond the length of Sault Tribe's requested extension. *See* Mem., RE 1883, PageID#10692.

requested an extension only until November 14, 2022, Mot., RE 2009, PageID#11931. Sault Tribe did not oppose the latter motion and the district court granted it, but left Sault Tribe's motion for a further extension pending. *See* Order, RE 2014, PageID#11958. Although the parties were close to reaching a successor decree, disputes between Grand Traverse and the State, and Sault Tribe "maintain[ing] objections" to certain decree provisions, unexpectedly frustrated negotiations. Mot., RE 2025, PageID#12014.

Negotiations came down to the wire without a successor decree in place, and on November 14, 2022, the day the 2000 Decree was set to expire, the district court had not acted on Sault Tribe's motion to extend the 2000 Decree until December 29, 2022. All parties except Sault Tribe jointly moved to extend the 2000 Decree until the district court had adjudicated objections to a proposed successor decree. Mot., RE 2025, PageID#12015. The court granted the motion, ordered a status conference to establish deadlines for resolving the disputes between the State and Grand Traverse Band, and dismissed as moot Sault Tribe's pending motion to extend the Decree. Order, RE 2027, PageID#12020-22.

Even though Sault Tribe had supported extending the 2000 Decree from August 2020 through December 2022, it shifted positions in November 2022 to file numerous motions challenging the district court's November 14 extension of the 2000 Decree. In November 2022, the Tribe filed a motion requesting that the court

terminate the 2000 Decree, which the Tribe later withdrew. Mot., RE 2028, PageID#12023; Notice, RE 2044, PageID#12354. In December 2022, the Tribe filed a notice of non-consent to the district court's recent extension of the 2000 Decree, Notice, RE 2045, PageID#12357; a motion for reconsideration of the 2000 Decree, Mot. RE 2046, PageID#12360, which the district court later denied as moot, Op., RE 2130, PageID#15205; and a motion to vacate the 2000 Decree, Mot., RE 2055, PageID#12398, which the Tribe later withdrew, Order, RE 2071, PageID#12698.

E. The 2023 Decree

In December 2022, less than a month after the district court extended the 2000 Decree, all parties except Sault Tribe stipulated to the entry of a new successor decree ("2023 Decree"). Stip., RE 2042, PageID#12161. Just as the district court had adjudicated Bay Mills' objections to the 1985 Decree, here too the court provided Sault Tribe and amicus Coalition to Protect Michigan Resources ("Coalition") the opportunity to file written objections to the 2023 Decree. *See* Order, RE 2053, PageID#12396.

Relevant here, Sault Tribe raised two legal objections, arguing that the 2023 Decree is a "Consent Decree" that the district court lacked jurisdiction to enter without the Tribe's consent, and that the district court must evaluate the 2023 Decree against the standard articulated in *People v. LeBlanc*, 399 Mich. 31 (1976).

Objs., RE 2077, PageID#12804-08. The Tribe also made more than one hundred conclusory factual objections to the Decree—unsupported by expert affidavits or other documentary evidence—arguing among other things that the Decree failed to support tribal sovereignty and restricted the Tribe's rights. *See id.* at PageID#12808-821. Even though Sault Tribe was already participating in the objection process outlined by the district court, it simultaneously requested a pretrial conference to "establish a timeline to prepare the matter for trial." Mot., RE 2078, PageID#12827. The other parties filed responses to Sault Tribe's objections in the district court, attaching expert affidavits in support of entering the 2023 Decree, and responded to Sault Tribe's request for a trial. *See, e.g.*, Resp., RE 2104, PageID#14117; Resp., RE 2080, PageID#12858.

In May 2023, the district court held a two-day hearing on the Coalition's and Sault Tribe's objections, which included attorney argument on the proffered expert affidavits. *See* Hr'g Tr., RE 2119, PageID#14413-625; Hr'g Tr., RE 2120, PageID#14626-821. At the end of the hearing, the court inquired into whether the litigants would like to hold a further evidentiary hearing during two days in June that the court had previously raised with the parties. *See id.* at PageID#14820 ("The issue then will be whether you want to come back to court for live testimony. I've got two days in June . . . but on the other hand, if you want to handle it by deposition and submit the transcript, that would be okay with the

Court too."). No litigant responded at the hearing to the court's inquiry, *see id.*, moved the court to schedule the evidentiary hearing, or otherwise submitted deposition transcripts to the court.

In June 2023, the district court declined to hold an evidentiary hearing because it did not "require expert testimony to resolve the objections to the Decree, especially given that no party or amici requested expansion of the record" after the court's two-day hearing. Order, RE 2114, PageID#14376.[4] But the court still permitted the litigants to file proposed findings of fact and conclusions of law. *See id.* The litigants accordingly submitted those filings, where they yet again reiterated their arguments to the court and responded to the other litigants' arguments. *See, e.g.*, Findings of Fact, RE 2123, PageID#14828.

Following its review of all the objections, responses, affidavits, and proposed findings of fact and conclusions of law, the district court approved the 2023 Decree and entered it for twenty-four years in August 2023. Op., RE 2130, PageID#15095-233; Order, RE 2131, PageID#15234. The court relied on

[4] The Coalition had earlier stated in a footnote to its objections to the Decree that "the Coalition is prepared to present its proofs [as to its experts' qualifications] at a hearing should the Court so allow." Objs., RE 2062, PageID#12531 n.12. But that proffer did not request an expansion of the record after the district court's two-day hearing, and a footnote cannot preserve an argument in this circuit. *See Becherer v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 43 F.3d 1054, 1058-59 (6th Cir. 1995). Sault Tribe did not request expansion of the record after the district court's two-day hearing.

Michigan, 12 Indian L. Rep. 3079, as "the standard of review" for adjudicating and entering the Decree. *See* Op., RE 2130, PageID#15110-11, 15106. Relevant here, it explained that the Decree is not a consent decree, and that it could enter the Decree over the objections of Sault Tribe based on the court's "continuing jurisdiction to protect the Great Lakes fishery and the Treaty rights." *Id.* at PageID#15108-09. The 139-page opinion also offered detailed reasoning rejecting each of Sault Tribe's more than a hundred individual factual objections to the Decree. *See id.* at PageID#15111-205.

The district court held that "the approval and entry of the Proposed Decree is in the best interest of the fishery, the Parties, and the amici," and that the Decree "respects and promotes Tribal fishing rights and opportunities" while also "preserv[ing] the Great Lakes fishery" and "recogniz[ing] the shared nature of the resource." *Id.* at PageID#15097. Noting that Sault Tribe argued the Decree was too protective and the Coalition argued the Decree was not protective enough, the court provided that "the Proposed Decree represents a medium between [the Coalition] and the Sault's objections, and it protects the resource while appreciating the Treaty right." *Id.* at PageID#15206.

Indeed, the 2023 Decree supports the sustainability of the fishery by continuing to preserve the fishery's "zonal" allocation plan—permitting certain harvest levels in different zones with seasonal restrictions—that has been in place

since 1985 and the absence of which the district found would "lead to the demise of the fishery in its entirety." *Id.* at PageID#15161. The Decree also uses a new dynamic approach to model and calculate limits on fishery harvest to better respond to underlying changes in the resource, 2023 Decree, RE 2132, PageID#15269-70; provides for the reduction of target annual mortality rates for Whitefish, *compare* 2000 Decree, RE 1458, PageID#3266 *with* Koproski Aff., RE 2086-2, PageID#13096; and requires a new electronic reporting system to better track fishery harvest, 2023 Decree, RE 2132, PageID#15284.

Contrary to Sault Tribe's framing, the 2023 Decree also preserves and protects the treaty right to the benefit of Sault Tribe fishers. Because of the declining economic viability of trap net fishing, the 2023 Decree provides tribal fishers with more opportunity to fish with gillnets rather than trap nets, and ensures that tribes can fish without competition from state fishers in certain zones and seasons. *See* Decree, RE 2132, PageID#15244-57. The 2023 Decree also maintains a favorable allocation of the fishery for the Tribes, where tribal fishers receive ninety percent of commercial Whitefish harvest and share Lake Trout harvest with state fishers approximately equally. *See id.* at PageID#15270-71. The Decree protects tribal subsistence fishing, with reasonable restrictions to ensure that commercial fishers do not circumvent harvest limits by categorizing their catch as subsistence harvest. *See id.* at PageID#15277-79. And the Decree

pledges twenty-one million dollars of funding for tribal fishing programs. *Id.* at PageID#15296-97. Above all, with the Decree in place for the next twenty-four years, tribal fishing is secure from being usurped by state fishing regulations, like in the years before the 1979 Decree. *See* Op., RE 2130, PageID#15161-62.[5]

SUMMARY OF ARGUMENT

1. The district court did not abuse its discretion when it entered the 2023 Decree over the objections of Sault Tribe.

a. The district court correctly recognized that the 2023 Decree was not a consent decree, and reasonably entered it over Sault Tribe's objections pursuant to the district court's continuing jurisdiction over the 1979 Decree and equitable authority to allocate the resource. In so doing, the court appropriately relied on the law of the case, *Michigan*, 12 Indian L. Rep. 3079, and Supreme Court precedent recognizing the court's equitable authority to allocate the resource, *Fishing Vessel*, 443 U.S. at 685-86.

b. Sault Tribe forfeited its argument that the district court failed to follow the procedures for entering the 2023 Decree as an injunction because the

[5] Sault Tribe argues that the Decree imposes more restrictions on tribal fishing than on state fishing. *See* Opening Br. 15. To the contrary, tribal recreational fishers "are subject to much less stringent reporting requirements" than state recreational fishers, Op., RE 2130, PageID#15145, and tribal commercial fishers have more commercial fishing rights (like gillnetting) than state commercial fishers, *id.* at PageID#15112.

Tribe did not make this argument in the district court. The Tribe is also estopped from making this argument because it previously advocated for entering the 1985 Decree over the objections of Bay Mills without meeting the standard for injunctive relief. In any event, Sault Tribe's argument relies on inapposite law about consent decrees and conflicts with the law of the case. And the district court's detailed opinion entering the 2023 Decree also meets the standard for entering a permanent injunction.

c. Sault Tribe argues in the alternative that the 2023 Decree is a consent decree, rather than an injunction, subject to the procedures and standards for entering consent decrees in racial discrimination and institutional reform cases. But even if the Court assumes that the 2023 Decree is a consent decree, which it is not, Sault Tribe's arguments still fail. Sault Tribe is not entitled to a trial on its objections to the 2023 Decree. The 2023 Decree also furthers the objectives of the law on which the complaint is based, remedies violations of federal law, and does not unreasonably deprive the Tribe of its legislative and executive powers because it protects and preserves the tribal treaty fishing rights declared in the 1979 Decree.

2. Sault Tribe's challenge to the seventh extension of the 2000 Decree is moot. The Court cannot grant any effectual relief regarding the extension of the 2000 Decree because the extension is no longer in effect and cannot be reinstated. Nevertheless, the district court did not abuse its discretion when it granted the

seventh extension of the 2000 Decree. The court appropriately identified the standard for modifying the 2000 Decree, which was entered as a consent decree, and it found that allowing the 2000 Decree to expire would be a significant change in circumstances and that the extension would be suitably tailored to the circumstances. Sault Tribe's other arguments fail because the circumstances warranting extension of the 2000 Decree were unforeseen, the district court was not required to hold an evidentiary hearing, and the extension did not upset the parties' bargain.

3. For the foregoing reasons, the Court should reject Sault Tribe's arguments on appeal. But if the Court reverses in whole or in part, it should exercise its equitable authority to bind Sault Tribe to the 2023 Decree pending remand. Exempting Sault Tribe from the Decree would harm the resource and the treaty right, as well as prejudice the sovereigns and fishers relying on the 2023 Decree's terms.

STANDARD OF REVIEW

This Court reviews the district court's entry of the 2023 Decree as an allocation of the fishery resource, for abuse of discretion. *See Fishing Vessel*, 443 U.S. at 687 (recognizing that district court's apportionment of fishery subject to treaty right was based on the "exercise of its discretion"); *Washington*, 520 F.2d at 686-88 (reviewing district court's decree apportioning fishery subject to treaty

right for abuse of discretion). This Court reviews the district court's modification of the 2000 Decree as a modification of a consent decree, for abuse of discretion. *Lorain NAACP v. Lorain Bd. of Educ.*, 979 F.2d 1141, 1148 (6th Cir. 1992).

"The phrase 'abuse of discretion' is generally regarded as a definite and firm conviction that the court below committed a clear error of judgment in the conclusion it reached upon a weighing of the relevant factors." *Holmes v. City of Massillon, Ohio*, 78 F.3d 1041, 1045 (6th Cir. 1996) (cleaned up). "A district court abuses its discretion when it relies on clearly erroneous findings of fact, or when it improperly applies the law or uses an erroneous legal standard." *Black Law Enf't Officers Ass'n v. City of Akron*, 824 F.2d 475, 479 (6th Cir. 1987) (internal quotations omitted).

ARGUMENT

I. The district court did not abuse its discretion when it entered the 2023 Decree.

A. The district court appropriately entered the Decree based on the court's equitable authority and continuing jurisdiction.

Sault Tribe argues that the 2023 Decree is not a consent decree because Sault Tribe did not consent to it. *See* Opening Br. 19. But no one disputes that point. The district court correctly entered the 2023 Decree as a judicial decree, not a consent decree, based on its continuing jurisdiction over the 1979 Decree—which likewise was a judicial decree, not a consent decree—and equitable

authority to allocate the fishery resource. *See* Order, RE 2130, PageID#15108-09. In reaching that conclusion, the district court applied the law of the case from an earlier stage of the litigation, which this Court reviews for abuse of discretion. *See Rouse v. DaimlerChrysler Corp.*, 300 F.3d 711, 715 (6th Cir. 2002).

A consent decree is both "a voluntary settlement agreement which could be fully effective without judicial intervention," and a "final judicial order" that approves that settlement and "places the power and prestige of the court behind the compromise struck by the parties." *Williams v. Vukovich*, 720 F.2d 909, 920 (6th Cir. 1983). For a consent decree, the parties' agreement, rather than "the force of the law upon which the complaint was originally based," serves as "the source of the court's authority to enter [the] judgment." *Loc. No. 93 v. City of Cleveland*, 478 U.S. 501, 522 (1986).

Because Sault Tribe refused to stipulate to the entry of the 2023 Decree, the Decree does not derive its authority to regulate the fishery from full party consent and does not function as a consent decree. Indeed, all parties and amici agree that the 2023 Decree is not a consent decree. *See* Opening Br. 19 ("The 2023 Decree is not a consent decree"); Stip., RE 2042, PageID#12161 (referring to "Decree" rather than consent decree); *United States v. Michigan*, No. 23-1944, Coalition Opening Br. 20 n.9 (arguing that 2023 Decree is "a negotiated decree entered through the equitable power" of district court).

Relying on the law of the case, the district court correctly recognized that the 2023 Decree was not a consent decree, and entered it over the objections of Sault Tribe based on the court's continuing jurisdiction and equitable authority. *See* Op., RE 2130, PageID#15108-09. The court first found that it had continuing jurisdiction to implement the 1979 Decree, *id.* at PageID#15108, because the 1979 Decree declares the Tribes' rights in the 1836 Treaty and provides that the district court retains jurisdiction over this case "to make rulings and to issue such orders as may be just and proper . . . in the implementation of this decree," *Michigan*, 471 F. Supp. at 281. The court also determined that its continuing jurisdiction has "been interpreted broadly" to allow it to "issue orders necessary to protect the resource and the Treaty rights," Op., RE 2130, PageID#15108, because this Court has held that the district court retains "jurisdiction to determine the rights of the parties under treaties of the United States," *Michigan*, 653 F.2d at 280. And the district court recognized that it has exercised its "continuing jurisdiction and equitable powers to enter orders regulating the fishery," Op., RE 2130, PageID#15108, even over the objections of other parties, *see United States v. Michigan*, 534 F. Supp. 668, 669-70 (W.D. Mich. 1982) (entering 1982 fishing regulations over objections of State); *accord* Op., RE 2080-1, PageID#12890-91 (confirming over State's objections that the district court retained the authority to allocate the fishery).

Most relevantly, the district court relied on *Michigan*, 12 Indian L. Rep. 3079, to hold that it could "enter a new decree" over a party's objections "after providing the objecting party with due process," Op., RE 2130, PageID#15109. In *Michigan*, 12 Indian L. Rep. 3079, the district court adjudicated Bay Mills' objections to the 1985 Decree, and entered the 1985 Decree over Bay Mills' objections based on the court's continuing jurisdiction and "powers as a court of equity" to protect "the reserved rights of the tribal fishermen" and "preserv[e] . . . the resource," *id.* at 3079-81. Here too, the district court "exercise[d] its continuing jurisdiction" to enter the Decree over the objections of Sault Tribe "to protect the Great Lakes fishery and the Treaty rights," Op., RE 2130, PageID#15109, only after providing a robust objection and hearing process for the Tribe, *id.* at PageID#15096.

Sault Tribe misreads *Michigan*, 12 Indian L. Rep. 3079, when it argues that the district court improperly relied on this law of the case to enter the 2023 Decree over its objections. *See* Opening Br. 23. The Tribe suggests that in *Michigan*, 12 Indian L. Rep. 3079, the district court only entered the 1985 Decree because Bay Mills "consented to be bound" by the Decree. Opening Br. 24. That is an incorrect reading of a single sentence in the district court's opinion, which simply describes how all counsel "agreed that the court could choose one of the two [allocation] plans" proposed by the parties "or reject both." *Michigan*, 12 Indian

L. Rep. at 3080. The district court repeatedly explained that it entered the 1985 Decree over Bay Mills's objections. *See id.* (describing "Bay Mills rejection of the March 28th agreement"); *id.* at 3089 (deciding "the allocation issue contrary to the Bay Mills proposal"). Sault Tribe's counsel also previously argued that the 1985 Decree "should be imposed upon Bay Mills Community." *See* Tr. 465, U.S. App. 5. The district court did not abuse its discretion by applying the law of the case to hold that just as it had imposed the 1985 Decree over the objections of Bay Mills in *Michigan*, 12 Indian L. Rep. 3079, here too it would enter the 2023 Decree over the objections of Sault Tribe.

For these reasons, the district court properly recognized that the law of the case supports the 2023 Decree. But the Decree is also justified as an equitable allocation of the fishery resource, pursuant to Supreme Court precedent. The Supreme Court has repeatedly held that courts retain equitable authority to allocate scarce natural resources subject to tribal treaty rights, regardless of whether the parties agree to the allocation. *See United States v. Winans*, 198 U.S. 371, 384 (1905) (recognizing that "adjustment and accommodation" of treaty fishing rights is "a matter for judicial determination."); *Arizona v. California*, 376 U.S. 340 (1964) (allocating water rights, including tribal waters rights, in the Lower Basin of the Colorado River); Cohen's Handbook of Federal Indian Law § 18.04 (2023). For example, in *Fishing Vessel* the Supreme Court affirmed a district court's

equitable power to apportion a fishery resource between Indian treaty users and non-treaty users, 443 U.S. at 684-86, and also to "assum[e] direct supervision of the fisheries" to prevent the non-treaty users from infringing that treaty right, *id.* at 695. Here too, the district court relied on those same equitable powers to enter the 2023 Decree. *See* Op., RE 2130, PageID#15103 (relying on *Fishing Vessel*, 443 U.S. 658, in support of its authority to enter the Decree).

B. Sault Tribe's new argument that the district court improperly entered the Decree as a permanent injunction fails.

Sault Tribe argues that the 2023 Decree "is a permanent injunction," Opening Br. 21, which should be reversed because the district court did not evaluate whether the 2023 Decree meets the "permanent injunction standard," Opening Br. 25. Sault Tribe forfeited this argument by failing to make it in the district court, and it should be estopped from making this argument based on its prior litigation positions. The Tribe's argument also relies on inapposite law and contradicts the law of the case, and the district court's opinion met the standard for injunctive relief in any event.

As an initial matter, this Court should not reach Sault Tribe's new argument that the 2023 Decree constitutes an impermissible injunction because Sault Tribe forfeited the argument on appeal by having failed to make the argument in the district court. "If a party fails to raise an issue to the district court, then that party

forfeits the right to have the argument addressed on appeal." *Guyan Int'l, Inc. v. Prof'l Benefits Adm'rs, Inc.*, 689 F.3d 793, 799 (6th Cir. 2012) (internal quotations omitted). This Court reviews only "the case presented to the district court, rather than a better case fashioned after an unfavorable order." *Id.*

Sault Tribe nonetheless argues in its appeal that the 2023 Decree "is a permanent injunction" that the district court imposed "without requiring the moving parties to satisfy the standard for injunctive relief." Opening Br. 24; *see also id.* at 19, 25-27. That argument appears nowhere in Sault Tribe's objections to the entry of the 2023 Decree, Objs., RE 2077, PageID#12804-23, its Findings of Fact and Conclusions of Law, RE 2123, PageID#14828-60, or elsewhere in the Tribe's filings opposing entry of the 2023 Decree. By failing to make its injunction argument in the district court, Sault Tribe forfeited making this new argument in this appeal. *See Guyan Int'l*, 689 F.3d at 799 (holding that appellant forfeited argument it failed to make in district court); *Bannister v. Knox Cnty. Bd. of Educ.*, 49 F.4th 1000, 1012 (6th Cir. 2022) (rejecting as forfeited argument that is "nowhere to be found" in the district court). The district court was not required to "invent" and respond to Sault Tribe's never previously raised legal theory that the Decree operated as an improper injunction because this Court does not "require district judges to be legal alchemists, turning one claim into another, to avoid reversal on appeal." *Id.*

The Court should also judicially estop Sault Tribe from arguing that the 2023 Decree operates as an injunction in order to prevent the Tribe from gaining an unfair advantage in this litigation. "The doctrine of judicial estoppel prevents a party who successfully assumed one position in a prior legal proceeding from assuming a contrary position in a later proceeding." *Mirando v. U.S. Dep't of Treasury*, 766 F.3d 540, 545 (6th Cir. 2014). This Court typically relies on three factors to decide whether estoppel applies, including: (1) whether a party's later position is "clearly inconsistent with its earlier position," (2) whether "the party has succeeded in persuading a court to accept that party's earlier position," and (3) whether the party "would derive an unfair advantage" or "impose an unfair detriment on the opposing party" if not estopped. *Id.* (citing *New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001)).

In 1985 when Bay Mills objected to the 1985 Decree and proposed an alternative allocation plan, Sault Tribe tendered briefs, findings of fact and conclusions of law, evidence, and oral argument in support of entering the Decree over the objections of Bay Mills. *Michigan*, 12 Indian L. Rep. 3080. Sault Tribe's counsel also argued before the district court that the 1985 Decree "*should be imposed upon Bay Mills Indian Community*" on a finding that the Decree "*protects the fishing right*," without reference to the standard for obtaining a permanent injunction. Tr. 465, U.S. App. 5 (emphasis added). The district court adopted that

position and entered the 1985 Decree over the objection of Bay Mills based on its equitable authority and continuing jurisdiction. *See Michigan*, 12 Indian L. Rep. at 3080-81 (citing *Fishing Vessel*, 443 U.S. 658). Consistent with Sault Tribe's own arguments, the district court made no findings under the standard for injunctive relief. *See id.*

Now seeking to reverse the 2023 Decree, Sault Tribe asserts a clearly inconsistent position to argue that the district court may only enter a decree over a party's objection by citing and meeting the stringent standard for imposing a permanent injunction. *See* Opening Br. 24-27. But the Court should estop Sault Tribe from raising its new injunction argument to prevent the Tribe from gaining an unfair advantage through its inconsistent positions. *See Mirando*, 766 F.3d at 546-48 (applying estoppel test). If Sault Tribe could impose the 1985 Decree on Bay Mills without having to demonstrate that the standard for a permanent injunction was satisfied, then Bay Mills and the other parties must be able to impose the 2023 Decree on Sault Tribe without making the showings required by that same standard.

Sault Tribe's argument that the 2023 Decree functions as an injunction also relies on inapposite legal authorities. Sault Tribe argues that a *consent decree* has an "injunctive quality," Opening Br. 21 (citing *Vanguards of Cleveland v. City of Cleveland*, 23 F.3d 1013, 1018 (6th Cir. 1994)), and that "the prospective

provisions of a consent decree operate as an injunction," *id.* (citing *Williams*, 720 F.2d at 920). But that law doesn't apply here because all parties, including Sault Tribe, agree that the 2023 Decree is not a consent decree. *See* Opening Br. 19. Importantly too, these cases do not require courts to apply the legal standard for permanent injunctions under *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 156-57 (2010), to *enter* a consent decree. They merely refer to injunctions to emphasize that, like an injunction, consent decrees can be modified in response to changed circumstances. *See Vanguards of Cleveland*, 23 F.3d at 1018.

In any event, Sault Tribe's arguments rely on a false binary. According to Sault Tribe, a decree regulating the fishery must either take its force from the consent of the sovereign parties, or from the four-part injunction test. But as discussed, the law of the case demonstrates that continuing jurisdiction over the 1979 Decree and equitable authority to allocate treaty resources are additional sources of authority that permit the district court to enter the Decree over the objections of Sault Tribe, without making findings under the injunction factors. For example, the district court entered the 1985 Decree over the objection of Bay Mills without meeting the standard for injunctive relief. *Michigan*, 12 Indian L. Rep. at 3080-81. This Court has also endorsed entering fishery management orders without addressing the standard for injunctive relief and without the consent of all parties, such as when it imposed "interim rules regarding gill net fishing" in

the fishery in 1981 without making the findings required for an injunction. *See Michigan*, 653 F.2d at 279. The district court did not abuse its discretion by applying this law of the case to enter the 2023 Decree. *See* Op., RE 2130, PageID#15108-09; *Rouse*, 300 F.3d at 715.

Finally, even if the Court finds that the district court had to conduct some type of review under the standard for injunctive relief to enter the 2023 Decree over Sault Tribe's objections, the district court's exhaustive findings in its opinion entering the 2023 Decree—running 139 pages—would more than meet that standard. In order to obtain a permanent injunction, the moving party must demonstrate irreparable injury, that remedies available at law are inadequate to compensate for that injury, and that the balance of the hardships and public interest warrant the injunction. *Monsanto*, 561 U.S. at 156-57. Here, on the filings submitted by the stipulating parties, the district court found that the absence of an enforceable decree would irreparably harm the fishery. *See* Op., RE 2130, PageID#15160-61 (holding that absence of zonal plan for treaty waters would create a "free-for-all" and "the demise of the fishery in its entirety"). Remedies at law like monetary damages cannot remedy such harm to a natural resource. *See Amoco Prod. Co. v. Vill. Of Gambell, AK*, 480 U.S. 531, 545 (1987). And the court's other findings throughout its opinion demonstrate that the balance of the hardships and the public interest weigh decisively in favor of entering the Decree.

See Op., RE 2130, PageID#15097, 15204, 15206, 15233. True, the district court did not label its findings in terms of the four equitable factors. But given that all the findings required to support an injunction are already in the district court's opinion, the district court should not be faulted for failing to articulate those findings in terms of a test that Sault Tribe never asked the court to apply.

C. Sault Tribe's challenge to the 2023 Decree as a consent decree fails.

Sault Tribe asserts that "[e]ven if, for argument's sake, the 2023 Decree were construed as a consent decree," the district court erred by failing to follow different standards for entering consent decrees. Opening Br. 28. Because Sault Tribe has correctly recognized that the 2023 Decree *is not* a consent decree, *see* Opening Br. 19 ("[T]he 2023 Decree is not a consent decree."), all of its arguments here that rely on the assumption that the 2023 Decree *is* a consent decree are inapposite, *see* Opening Br. 28-41.

In any event, those arguments would not afford Sault Tribe the relief it seeks. Even if this Court found that the 2023 Decree is a consent decree, the cases cited by Sault Tribe would not permit reversal of the 2023 Decree as to all parties. As a party intervenor, Sault Tribe "does not have power to block" a consent decree "merely by withholding its consent." *Loc. No. 93*, 478 U.S. at 529. If the Court interprets the 2023 Decree as a consent decree and adopts Sault Tribe's arguments, at most the Court could limit the Decree's impact on Sault Tribe and remand for

further proceedings as to the Tribe. *See United States v. City of Miami, Florida*, 664 F.2d 435, 436 (5th Cir. 1981) (limiting consent decree's effect on the objecting party).[6]

To the extent this Court considers Sault Tribe's remaining arguments about whether the 2023 Decree otherwise satisfies the procedures and standards for entering a consent decree, those arguments are flawed.

1. A trial on the merits was not required.

Despite its view that a consent decree can never be imposed over party objections, *see* Opening Br. 29, Sault Tribe devotes considerable space in its brief to the question of what procedures should have been used to air its objections, *see* Opening Br. 28-32. It argues that the district court erred by "entering the 2023 Decree" without "hold[ing] a trial to resolve [its] objections to the 2023 Decree." Opening Br. 28. But in support, Sault Tribe relies on inapposite cases about consent decrees and its own misreading of the law of the case.

Even when a district court approves a disputed consent decree that lacks the consent of those who negotiated it, each party has the opportunity to "air its objections" at a fairness hearing. *Loc. No. 93*, 478 U.S. at 528-29. That rule does not "create a broad right . . . to a quasi-trial, but rather simply require[s] a district

[6] If the Court were to grant such relief, which it should not, it should bind Sault Tribe to the 2023 Decree during a remand. *See infra*, pp. 53-54.

court conducting a fairness hearing to allow a party to a proposed settlement agreement to present evidence and have its objections heard." *Tennessee Ass'n of Health Maint. Organizations, Inc. v. Grier*, 262 F.3d 559, 567 (6th Cir. 2001) (internal quotations omitted). "The district court may limit the fairness hearing to whatever is necessary to aid it in reaching an informed, just and reasoned decision." *Id.* (internal quotations omitted). In terms of this process for party objections, Sault Tribe received the process it was due. The Tribe had the opportunity to present evidence and have its objections heard. *See, e.g.*, Order, RE 2053, PageID#12396; Hr'g Tr., RE 2119, PageID#14413-625.

Sault Tribe argues it is entitled to a trial on its objections primarily by relying on out-of-circuit cases, which hold that a district court should not impose sections of a consent decree on an objecting party intervenor whose rights would be impaired by those portions of the consent decree. *See United States v. City of Hialeah*, 140 F.3d 968, 984-85 (11th Cir. 1998); *City of Miami*, 664 F.2d at 447. In *City of Hialeah*, the court provided that a nonconsenting party's rights cannot be "abrogated" by a consent decree without a trial or summary judgment as to that party. 140 F.3d at 977. In *City of Miami*, the court remanded for trial insofar as the parties sought *remedy* against the objecting party. 664 F.2d at 436. But neither *City of Hialeah* nor *City of Miami* holds that a party objector must receive a full trial before a consent decree can be entered as to any parties, in contrast to Sault

Tribe's argument that the district court could not have entered the 2023 Decree at all without offering the Tribe a trial on its objections. *See* Opening Br. 28-29.

Sault Tribe is also incorrect in arguing that law of the case requires a full trial on objections before the district court could enter the 2023 Decree. *See* Opening Br. 31-32. This Court and the district court have never required the parties to hold a full trial on fishery allocation, even when a party did not consent to a proposed management decree. In 1981, this Court remanded for the district court to, among other things, hear evidence on whether the State's proposed regulations for the fishery met the *LeBlanc* standard, but it did not order a trial; and the State proposed no regulations subject to the *LeBlanc* standard here. *See Michigan*, 653 F.2d at 279. And when the district court entered the 1985 Decree over the objections of Bay Mills, it did not hold a full trial. The court found "that a hearing on the two proposed allocation plans could [] resolve the allocation motions without the necessity of a full trial." *Michigan*, 12 Indian L. Rep. at 3080. In 1999, the district court calendared a trial only as a contingency in case the parties did not submit any management decree to the court. *See* Order, RE 1441, PageID#3555. The district court never held a trial because the parties submitted the 2000 Decree.

2. The 2023 Decree meets the other standards highlighted by Sault Tribe.

Sault Tribe argues that the 2023 Decree does not meet the standards for entering a consent decree because the Decree does not "further the objectives of law on which the complaint was based," fails to remedy a violation of "federal law," and deprives the Tribe of its "legislative and executive powers." Opening Br. 33-39. The Tribe did not clearly present or develop these arguments in the district court. *See* Order, RE 2077, PageID#12804-22; Findings of Fact, RE 2123, PageID#14828-60.[7] But if the Court reaches these arguments, they rely only on broad legal standards for consent decrees related to racial discrimination, *Local No. 93*, 478 U.S. at 525, or institutional reform, *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 380 (1992). None of that law applies here, where the district court did not enter a consent decree, but rather allocated a fishery based on its continuing jurisdiction and equitable authority. In any event, the 2023 Decree meets these standards for consent decrees highlighted by Sault Tribe.[8]

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[7] Sault Tribe raised similar arguments in its motion to reconsider the extension of the 2000 Decree. *See* Mot., RE 2047, PageID#12378-81.

[8] Sault Tribe repeatedly makes these arguments on behalf of the other Tribes. *See* Opening Br. 34, 36-37, 39. But Sault Tribe lacks prudential standing to do so, and these arguments ignore the sovereign choices of Bay Mills, Grand Traverse, Little River, and Little Traverse to secure their treaty rights by stipulating to the 2023 Decree.

First, the 2023 Decree furthers the objectives of the law on which the United States' complaint is based. *See Loc. No. 93*, 478 U.S. at 525. The United States brought this suit in 1973 seeking, among other things, a declaration of the Tribes' fishing rights under the 1836 Treaty and a determination that the State cannot interfere with those rights. *See* Am. Compl. 5-6, Sault App. 10-11. The 2023 Decree furthers those objectives because it benefits and protects the Tribes' treaty fishing rights. The Decree ensures that the Tribes can fish in certain zones and at certain times without competition from state fishers, *see* 2023 Decree, RE 2132, PageID#15244-57, secures roughly ninety percent of the Whitefish harvest and half of the Lake Trout harvest for the Tribes, *id.* at PageID#15270-71, and sustainably expands gillnet opportunity to promote tribal commercial fishing, *id.* at PageID#15244-57. Sault Tribe's argument that the 2023 Decree "significantly restricts" its treaty rights, Opening Br. 33, ignores that the Decree benefits Sault Tribe by restricting state fishing within the "shared resource," just as in the 1985 and 2000 Decrees, *Michigan*, 12 Indian L. Rep. at 3081.[9]

Second, the 2023 Decree is properly tailored to the underlying violations of federal law on which this suit is based. *See Horne v. Flores*, 557 U.S. 433, 450

[9] Sault Tribe also argues that the 2023 Decree requires "comparatively few restrictions" on the State, *see* Opening Br. 34, but to the contrary state recreational and commercial fishers face more restrictions than equivalent tribal fishers, particularly because state fishers may not fish by gillnet. *See supra*, p. 20 n.5.

(2009); *Rufo*, 502 U.S. at 389. The district court entered the 1979 Decree to declare the Tribes' off-reservation fishing rights under the 1836 Treaty and prohibit the State from improperly regulating those treaty rights. *See* Op., RE 2080-1, PageID#12879-80. The district court has since entered management decrees allocating the resource as "a way to effectuate the rights that the court has already declared" in the 1979 Decree, ensuring tribal fishers have full opportunity to exercise their rights. *Id.* at PageID#12885. The 2023 Decree, like past decrees, is properly tailored to the underlying violations of law on which this suit is based because it protects the Tribes' treaty fishing rights through equitable apportionment and cooperative fisheries management. Sault Tribe's argument that the 2023 Decree is no longer necessary because *the Tribe* is not "engaged in any violation of . . . federal law," Opening Br. 37, misunderstands that the 2023 Decree allocates the fishery to protect the treaty right vis-a-vis the State, not as a restriction of tribal treaty rights.

Third, the 2023 Decree does not deprive Sault Tribe of its "legislative and executive powers." *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431, 441 (2004). Sault Tribe relies on cases in which courts seek to dissuade government officials from entering consent decrees that will "bind state and local officials to the policy preferences of their predecessors." *Horne*, 557 U.S. at 449. That caselaw is particularly irrelevant here because the 2023 Decree does not derive any legal force

from the voluntary commitment of Sault Tribe. *Cf. Frew*, 540 U.S. at 441. And in any event, only when a consent decree goes beyond "reasonable and necessary implementations of federal law" could it deprive a party of its legislative or executive powers. *Id.* The 2023 Decree is a "reasonable and necessary implementation[] of federal law" because, as explained, it safeguards Sault Tribe's treaty right and access to the resource. *Id.*

Finally, Sault Tribe's argument that the Court should "return to Sault Tribe the responsibility of . . . regulating its own Treaty fishing activities," Opening Br. 40, purportedly because "the objects of the decree have been obtained," *id.* at 38 (citing *Frew*, 540 U.S. at 442), is misplaced and extremely problematic. The Decree addresses allocation of a scarce shared resource. No individual tribe has the ability in this circumstance to simply have "returned" to it the regulation of its own Treaty fishing activities because those activities do not occur in a single-tribe context. Unlike in institutional reform litigation where the underlying violation of law may resolve and no longer require a consent decree, *see Frew*, 540 U.S. at 441-42, here resource scarcity and social conflict require the district court to continue to allocate the fishery and manage disputes between parties with both shared and differing interests, *see* Op., RE 2130, PageID#15136 (describing resource changes); *Michigan*, 12 Indian L. Rep. 3079 (describing "social discord" and "occasional violence" in years following 1979 Decree). Yielding to Sault

Tribe's demand to "self-regulate," unbound from the 2023 Decree, *see* Opening Br. 39-40, would not only create "a free-for-all" fishery that would severely strain the resource Op., RE 2130, PageID#15160, but it would also erase the other four Tribes' sovereign choice to protect their treaty rights by supporting the 2023 Decree, *see Michigan*, 12 Indian L. Rep. at 3086 (noting that without cooperation "all will try to exploit the resource at the expense of others").

Nor should the Court presume that Sault Tribe can effectively self-regulate in this case, where the sovereigns sharing a limited resource has long required cooperative management. *See* Opening Br. 39-40. Contrary to the Tribe's arguments, *see* Opening Br. 40, the district court has never permitted unsupervised tribal self-regulation in the fishery since it issued the 1979 Decree. Between 1979 and 1985, a mixture of state regulations, federal regulations, joint tribal regulations approved by the district court, and stipulated regulations governed the fishery. *See supra*, pp. 6-8. Since 1985, court-entered management decrees have governed the fishery, with only a few minor court-sanctioned exceptions. *See Michigan*, 12 Indian L. Rep. 3079; 2000 Decree, RE 1458, PageID#3216; 2023 Decree, RE 2130, PageID#15095. And the Tribe's reliance on the principle that a state can only regulate a tribe's off-reservation hunting and fishing treaty rights in "the absence of effective Indian tribal self-regulation," Opening Br. 39 (citing *Michigan*, 653 F.2d at 279), ignores that the 2023 Decree represents joint

management, not state management, of the resource. In any event, this standard for state regulation of tribal fishing does not presume that the each of the five Tribes should make entirely independent management choices here, where many separate sovereigns must cooperate to preserve a scarce shared resource.

II. Sault Tribe's challenge to the district court's seventh extension of the 2000 Decree fails.

Sault Tribe appeals from the district court's seventh and final order extending the 2000 Decree, RE 2027, PageID#12020, apparently on the assumption that if this Court reverses the district court's entry of the 2023 Decree, it will automatically reinstate the 2000 Decree and rule on the Tribe's motion to reconsider the seventh extension of the 2000 Decree that the district court dismissed as moot, *see* Opening Br. 41-42. But no matter how this Court rules on the 2023 Decree, Sault Tribe's challenge to the district court's seventh extension of the 2000 Decree is still moot. And in any event, the district court did not abuse its discretion when it granted its final extension of the 2000 Decree to prevent a harmful regulatory gap in the management of the fishery.

A. Sault Tribe's challenge to the district court's extension of the 2000 Decree is moot.

"Article III denies federal courts the power to decide questions that cannot affect the rights of litigants in the case before them." *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990) (internal quotations omitted). This case-or-

controversy requirement exists through all stages of federal judicial proceedings. *Id.* at 477. "If 'the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome,' then the case is moot and the court has no jurisdiction." *Libertarian Party*, 462 F.3d at 584 (quoting *Los Angeles County v. Davis*, 440 U.S. 625, 631 (1979)). In other words, a case becomes moot when the court cannot "grant any effectual relief whatever to the prevailing party." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013).

Sault Tribe's appeal of the district court's seventh extension of the 2000 Decree is moot because this Court cannot grant any effective relief to Sault Tribe. When the district court granted the seventh extension of the 2000 Decree, it amended Section XXII(A) of the 2000 Decree to read "[t]he Decree shall not expire until all objections to a proposed successor decree have been adjudicated." Order, RE 2027, PageID#12022. And when the district court adjudicated "all objections" to the proposed successor decree in August 2023, *id.*, the 2000 Decree expired and its terms "no longer govern[ed] the Parties in any manner," 2000 Decree, RE 1458, PageID#3335. The Court cannot deliver relief regarding the extension order because the order is no longer in effect, and the terms of the 2000 Decree that the extension order modified have expired along with the rest of the 2000 Decree. *See Blue Cross & Blue Shield of Michigan v. Baerwaldt*, 726 F.2d

296, 298 (6th Cir. 1984) (holding that appeal was moot when challenged order "expired by its own terms").

The mootness exception for issues "capable of repetition, yet evading review," *Southern Pacific Terminal Co. v. Interstate Commerce Commission*, 219 U.S. 498, 515 (1911), does not apply here to a single time-limited extension of the 2000 Decree that no court can reinstate. This exception to the mootness doctrine is limited to situations in which, relevant here, "there is a reasonable expectation . . . that the controversy will recur." *Memphis A. Philip Randolph Inst. v. Hargett*, 2 F.4th 548, 559 (6th Cir. 2021) (internal citations omitted). But Sault Tribe challenges an extension of the 2000 Decree that ran only until the district court adjudicated the party objections to the 2023 Decree in August 2023. *See* Op., RE 2130, PageID#15095. There is no reasonable expectation that this extension order is "capable of repetition," because even if the 2000 Decree were somehow reinstated, there would be further proceedings in the district court where Sault Tribe could make arguments about the *new duration* of a reinstated 2000 Decree. Ultimately, the seventh extension order is not "capable of repetition" because a court cannot reinstate an outdated extension of the 2000 Decree that provides that the 2000 Decree has already expired. *Murphy v. Hunt*, 455 U.S. 478, 482 (1982) (holding that "capable of repetition" exception applies when there "was a

reasonable expectation that the same complaining party will be subject to the same action again.").

B. The district court did not abuse its discretion when it entered the seventh extension of the 2000 Decree.

Sault Tribe argues that the district court abused its discretion when it "indefinitely extended" the 2000 Decree, which—unlike the 1979, 1985, and 2023 Decrees—was a consent decree. Opening Br. 41. But this purported "indefinite" extension lasted only nine months, and came on the heels of *six* prior orders extending the 2000 Decree for *twenty-seven months*, which Sault Tribe largely supported or did not oppose. *See supra*, pp. 12-14. The district court did not abuse its discretion by appropriately entering this seventh extension on factual findings that the extension would prevent a harmful regulatory gap in the fishery while the parties were negotiating the successor 2023 Decree and pursuant to the legal standard for modifying consent decrees.

In the first of its seven extension orders, the district court recognized that it had the power to extend the 2000 Decree as a consent decree "in response to changed circumstances," Order, RE 1892, PageID#10820 (citing *Rufo*, 502 U.S. at 380), and "over the objection of a party," *id.* (citing *Vanguards of Cleveland*, 23 F.3d at 1018-19). The party seeking modification of a consent decree first "bears the burden of establishing that a significant change in circumstances warrants revision of the decree." *Rufo*, 502 U.S. at 383. A change in circumstances may

include: (1) "when changed factual conditions make compliance with the decree substantially more onerous," (2) "when the decree proves to be unworkable because of unforeseen obstacles," or (3) "when enforcement of the decree without modification would be detrimental to the public interest." *Id.* at 384. A modification of a consent decree must also be "suitably tailored" to the changed circumstances. *Id.* at 383. Sault Tribe does not dispute that this is the applicable legal standard. *See* Opening Br. 44.

The Tribe argues that the district court made "no required findings of fact" under this standard to support the seventh extension of the 2000 Decree, *id.*, but the Tribe has instead failed to establish that the district court's reasonable factual findings amounted to abuse of discretion, *see* Order, RE 2027, PageID#12020. In granting the extension, the district court recognized that the parties would not be able to file a successor decree by the time the 2000 Decree was set to expire, and a subsequent extension was "necessary to protect the natural resources" and prevent "additional negative consequences" for the fishery. Order, RE 2027, PageID#12020. The court also cited its "previous orders" extending the decree, *id.* (citing Order, RE 1892 at PageID#10822), where it made findings about the harmful consequences of "allowing the Decree to expire and leaving a regulatory gap" in the fishery, Order, RE 1892, PageID#10821. Given these findings, permitting the 2000 Decree to expire without modification would have been

"detrimental to the public interest," creating a significant change in circumstances. *Rufo*, 502 U.S. at 384. And the court's extension was "suitably tailored to the chang[ed] circumstances," *id.* at 383, because it would "preserve the status quo" by keeping the 2000 Decree in place until the court had adjudicated objections to a successor decree, Order, RE 2027, PageID#12021.

Nor can Sault Tribe assert that the other parties failed to allege "any changed factual conditions or unforeseen circumstances" warranting the seventh extension. Opening Br. 45. When all parties except Sault Tribe moved for the sixth extension of the 2000 Decree in September 2022, they had expected that they would finalize a successor decree by November 14, 2022. *See* Order, RE 2014, PageID#11958. But the moving parties explained in their seventh extension motion that unexpected circumstances, such as a dispute between Grand Traverse and the State, and Sault Tribe "maintaining objections" to certain decree provisions, had prevented timely entry of a successor decree. *See* Mot., RE 2025, PageID#12014.[10] Because no successor decree had been finalized by November 14 due to these disputes, the moving parties appropriately requested that the district court grant another extension of the Decree to prevent a "regulatory gap" in the fishery that would

[10] The mediator Justice Cavanaugh also informed the district court that the State and Grand Traverse Band were in "a stalemate." Order, RE 2027, PageID#12021.

"threaten[] the exploitation of the resource in the absence of regulations." *Id.* at PageID#12015.[11]

Sault Tribe also argues that the district court erred by extending the 2000 Decree without "an evidentiary hearing," Opening Br. 44, but no such hearing was required. This Court has at times required district courts to hold a "complete hearing" to modify the terms of a consent decree over the objections of a party. *United States v. Wayne Cnty., Michigan*, 369 F.3d 508, 512 (2004). But a "complete hearing . . . does not necessarily require a full-blown evidentiary hearing," particularly when "a hearing would not add anything to the briefs." *Gonzales v. Gavin*, 151 F.3d 526, 535 (6th Cir. 1998) (internal quotations omitted). A "complete hearing" is also only "*generally*" required to modify a consent decree. *Bradley v. Milliken*, 772 F.2d 266, 271 (6th Cir. 1985) (emphasis added).

Prior to issuing the seventh extension of the 2000 Decree that Sault Tribe challenges, the district court granted six prior extensions over twenty-seven months, which Sault Tribe largely either joined or did not oppose. *See supra*, pp. 12-14. The district court often issued these orders after status conferences in

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[11] Sault Tribe argues that it "was not provided an opportunity to respond to the Motion to Extend," Opening Br. 44, but counsel reached out to Sault Tribe to ask for its concurrence on that motion and reported to the district court that the Tribe did not concur, Certificate, RE 2026, PageID#12018. Although the district court quickly granted the motion to prevent the lapse of the 2000 Decree, Sault Tribe later filed a detailed motion for reconsideration. *See* Mot., RE 2046, PageID#12360.

which the parties offered oral testimony on the need for further extensions of the 2000 Decree. *See* Mins., RE 1911, PageID#10857 ("[O]rder extending Consent Decree to issue."); Mins., RE 1938, PageID#10896 (noting "anticipated motion to extend Consent Decree"). The district court was not required to hold a formal evidentiary hearing for the seventh extension Sault Tribe challenges here, given that the court had developed an extensive factual record in favor of extending the Decree over the course of granting the six prior extensions. *See Fla. Wildlife Fed'n Inc v. Adm'r, U.S. Env't Prot. Agency*, 620 F. App'x 705, 709 (11th Cir. 2015) (holding that no evidentiary hearing was required to modify consent decree where "modification . . . does not turn on any disputed issues of material fact").

In addition, Sault Tribe's argument that the seventh extension of the 2000 Decree "wreaks havoc on the parties' bargain" misrepresents the nature of this case. Opening Br. 46. The Tribe argues that the seventh extension of the 2000 Decree was a "dramatic[]" change in the parties' bargain because the extension was "indefinite," Opening Br. 47, but the district court appropriately tailored the extension to the facts before it, so that it would only remain in effect "until all objections to a proposed successor decree have been adjudicated," Order, RE 2027, PageID#12022. And because Sault Tribe had moved for or largely not opposed six extensions of the 2000 Decree totaling *twenty-seven months* in order to preserve the parties' bargain, it cannot credibly argue that this seventh extension, which

lasted for just *nine months*, somehow "dramatically change[d] the bargain struck in the 2000 Consent Decree." Opening Br. 47.

Sault Tribe relies on the non-precedential case *Northeast Ohio Coalition for the Homeless v. Husted*, No. 2:06-CV-896, 2017 WL 1531811 (S.D. Ohio Apr. 28, 2017) in support of this same argument, *see* Opening Br. 47. But there the district court denied a motion to extend a consent decree protecting the rights of indigent voters for *nine years*, whereas here the district court extended the 2000 Decree for nine months. *See Husted*, 2017 WL 1531811, at *2, 10-11 (denying 2016 motion to extend decree until 2025). The *Husted* court also extended the same decree for three years over a party's objections to address a failure to meet certain obligations under the decree, *see id.* at *11, similar to how the district court's narrowly-tailored extension of the 2000 Decree allowed the court to meet its obligation to protect the fishery resource and treaty right.

Sault Tribe also relies on *E.E.O.C. v. Local 40*, 76 F.3d 76 (2d Cir. 1996), where the Second Circuit held that the district court lacked jurisdiction over a consent decree that expired by its terms *twelve years prior* and included no continuing jurisdiction clause, *id.* at 80-81. But here the 2000 Decree never expired because the district court appropriately extended it, and the Decree specified that the court retained continuing jurisdiction over the case for "purposes

of enforcing this Decree," which bolstered the court's authority for its extension. *See* 2000 Decree, RE 1458, PageID#3336.

Nor can Sault Tribe sustain an argument that the seventh extension of the 2000 Decree is "unprecedented." Opening Br. 49. The Tribe argues that it is unusual for a court to extend a consent decree without "the consent of all parties," *id.*, but this Court permits district courts to modify consent decrees over party objections, *see Vanguards of Cleveland*, 23 F.3d at 1018. Sault Tribe also argues that courts should only grant an extension of a consent decree to "redress [a] demonstrated lack of compliance" by relying on a handful of cases in which courts extend a decree on those terms, *see* Opening Br. 49-50 (collecting cases). But the Supreme Court outlines many other circumstances when a court can modify a consent decree, including when, as here, enforcing a consent decree without modification would be "detrimental to the public interest." *Rufo*, 502 U.S. at 384.

Finally, Sault Tribe's arguments that the seventh extension of the 2000 Decree is "no longer equitable" merely restates its prior arguments about the 2023 Decree, except it tries to apply these arguments to a single nine-month extension of the 2000 Decree. *See* Opening Br. 50-52. If the Court entertains these arguments, the seventh extension of the 2000 Decree was reasonably related to a violation of federal law and furthered the objects of the 1836 Treaty on which the claims in this case are based. *See Loc. No.* 93, 478 U.S. at 525. The 2000 Decree, which Sault

Tribe stipulated to, protected and implemented the Tribes' underlying treaty fishing rights that the district court declared in the 1979 Decree in an action against the State. *Michigan*, 471 F. Supp. at 278-81.

III. If the Court rules for Sault Tribe, the 2023 Decree should remain in force pending remand.

Sault Tribe requests that this Court reverse the entry of the 2023 Decree, effectively bar a hypothetical reinstatement of the 2000 Decree, and permit Sault Tribe to "self-regulate" in the fishery. *See* Opening Br. 37-41, 52-53. As the United States has explained, lifting all uniform regulations in the treaty waters would significantly damage the fishery resource and the treaty right, and ignite intense conflict between the parties in the courts and on the Great Lakes.

If the Court adopts Sault Tribe's arguments and rules against the 2023 Decree, it should not grant any of this drastic relief. "[F]ederal courts possess broad discretion to fashion equitable remedies." *Coal. for Gov't Procurement v. Fed. Prison Indus., Inc.*, 365 F.3d 435, 460 (6th Cir. 2004). Any relief granted should be limited to Sault Tribe only. And if the Court orders a remand, it should impose the 2023 Decree on Sault Tribe in the interim, just as it imposed interim regulations pending remand for the fishery in 1981. *See Michigan*, 653 F.2d at 279. Such an outcome would not prejudice Sault Tribe because the parties are currently cooperatively managing the fishery under the 2023 Decree, and no party has moved for emergency relief. Creating an exception to the 2023 Decree for

Sault Tribe now, more than nine months after the Decree has gone into effect, would undermine the sustainability of the resource and the protection of tribal treaty rights, prejudice the sovereigns that have stipulated to the 2023 Decree's terms and their fishers that rely on them, and nullify three years of painstaking negotiations between the parties.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's Order Adopting the 2023 Great Lakes Fishing Decree, RE 2131, PageID#15234. The Court should also dismiss as moot Sault Tribe's appeal of the district court's Order Extending the 2000 Great Lakes Fishing Consent Decree, RE 2027, PageID#12020, or affirm that order.

Respectfully submitted,

s/ *Benjamin W. Richmond*

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i) because it contains 12,994 words according to the count of Microsoft Word, excluding the parts of the brief exempted under Fed. R. App. P. 32(f) and 6th Cir. R. 32(b)(1). I further certify that this brief complies with the requirements of Fed. R. App. P. 32(a)(5) and (6) because it has been prepared in 14-point Times New Roman, a proportionally spaced font.

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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2024, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

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ADDENDUM: DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

Pursuant to 6th Cir. R. 28(b)(1) and 30(g), the United States designates the following portions of the record on appeal:

Description	RE	PageID#
Order Approving Agreement Between Parties	1378	4175-4178
Scheduling Order	1441	3554-3559
Stipulation for Entry of Decree	1457	3401-3414
2000 Consent Decree	1458	3216-3400
Stipulation on Appointment of Mediator	1876	2146-2150
Motion to Extend Decree	1879	10664-10667
Memorandum in Support of Motion to Extend	1883	10679-10693
Order Extending Decree	1892	10818-10825
Motion to Extend Decree	1901	10836-10839
Motion to Extend Decree	1909	10850-10853
Minutes of Status Conference on Motion to Extend	1911	10857
Minutes of Status Conference on Motion to Extend	1938	10896
Order Extending Decree	1945	10909-10911
Order Extending Decree	1963	10934-10935
Opinion and Order Denying Motion to Intervene	1985	11662-11686
Motion to Extend Decree	2006	11925-11927
Motion to Extend Decree	2009	11931-11934
Order Extending the Decree	2014	11957-11958
Motion to Extend Decree	2025	12013-12017
Certificate Regarding Concurrence	2026	12018-12019
Order Extending the Decree	2027	12020-12022
Motion to Enforce Expiration of Decree	2028	12023-12025
Stipulation for Entry of Proposed Decree	2042	12161-12166
Notice of Withdrawal of Motion to Enforce Decree	2044	12354-12356
Notice of Non-Consent to Extension	2045	12357-12359
Motion for Reconsideration of Decree Extension	2046	12360-12363
Brief in Support of Motion for Reconsideration	2047	12369-12386
Amended Scheduling Order	2053	12395-12396
Motion to Vacate and Dismiss Extension of Decree	2055	12398-12401
Objections to Proposed Decree	2062	12499-12534

Order Dismissing as Withdrawn Motion to Vacate	2071	12698-12699
Opinion Entering Fishery Regulations	2076-1	12801-12803
Objections to Proposed Decree	2077	12804-12823
Motion to Amend Decree and Objections	2078	12824-12828
Response to Objections to Proposed Decree	2080	12858-12875
Opinion and Order on Fishery Allocation	2080-1	12879-12891
Caroffino Affidavit	2084-1	12984-13001
Koproski Affidavit	2086-2	13093-131038
Response to Objections to Proposed Decree	2104	14120-14122
Order Denying Motion for Pre-Trial Conference and Case Management Order	2114	14375-14378
Transcript of Hearing on Objections, Vol. I	2119	14413-14625
Transcript of Hearing on Objections, Vol. II	2120	14626-14821
Proposed Findings of Fact and Conclusions of Law	2123	14828-14860
Opinion Regarding the Approval of the 2023 Great Lakes Fishing Decree	2130	15095-15223
Order Adopting the 2023 Great Lakes Fishing Decree	2131	15234-15235
2023 Great Lakes Fishing Decree	2132	15236-15301
Notice of Appeal	2138	15381-15383