No. 23-1931

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

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,
Plaintiff-Intervenors-Appellees,
and

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

STATE OF MICHIGAN, *et al*.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Michigan, Northern Division, Case No. 2:73-cv-26-PLM
Honorable Paul. L. Maloney

REPLY BRIEF OF PLAINTIFF-INTERVENOR-APPELLANT SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

Ryan J. Mills
Sault Ste. Marie Tribe of Chippewa Indians
523 Ashmun St.
Sault Ste. Marie, MI 49783
906-635-6050
Email: rmills@saulttribe.net
Counsel for Plaintiff-Intervenor-Appellant Sault Ste. Marie Tribe of Chippewa Indians

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INTRODUCTION

Contrary to the positions the Stipulating Parties[1] take in their Response Briefs, a federal district court's equitable authority is not unbounded. A district court cannot issue injunctive relief, or other forms of equitable relief, without following the well-established standards that exist for those forms of relief. Yet that is what the District Court did here. The District Court abused its discretion by imposing the injunctive 2023 Decree, with its myriad restrictions, on Sault Tribe over its objections and without any adjudication of the merits. This abuse of discretion was even more egregious because Sault Tribe is a sovereign government and the restrictions limit its exercise of its Constitutionally protected Treaty rights (which are of paramount importance to it), as well as preclude it from exercising its sovereignty to regulate those fundamental rights as it deems best. The District Court's process ignored principles of fundamental fairness and its decision undermines Sault Tribe's sovereignty and Treaty rights. This Court should reverse the District Court's entry of the 2023 Decree and remand the matter for trial. The Stipulating Parties must be required to prove their entitlement to any restrictions they seek to impose on Sault Tribe against its will.

[1] Capitalized terms have the same meanings as defined in Sault Tribe's Opening Brief, ECF No. 30.

ARGUMENT

I. The 2023 Decree operates as an injunction improperly issued against Sault Tribe.

"*When I see a bird that walks like a duck, swims like a duck, and quacks like a duck, I call that bird a duck*."[2]

Regardless of what the District Court or the Stipulating Parties call it, the 2023 Decree operates as an injunction against Sault Tribe. As explained in Sault Tribe's Opening Brief at 24-25,[3] the 2023 Decree imposes extensive and detailed restrictions and obligations on Sault Tribe. Notably, none of the Stipulating Parties dispute that (nor could they). By ordering Sault Tribe what to do and not to do in numerous ways, the 2023 Decree is the definition of an injunction. *See United States v. City of Hialeah*, 140 F.3d 968, 974 (11th Cir. 1998) (finding that a proposed decree would have the effect of an injunction because it obligated the city to take certain actions and prevented it from taking other actions).

That injunction is improper *inter alia* because it was issued without Sault Tribe's consent, without the Stipulating Parties proving their entitlement to injunctive relief, without an adjudication on the merits, and without the District Court applying the standard for injunctive relief. Opening Br. 34-37.

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[2] *Garland v. Cargill*, 602 U.S. 406, 430 (2024) (Sotomayor, J., dissenting).
[3] Citations to filings in this appeal are to ECF page numbers.

Although the Stipulating Parties never alleged, much less proved, that they were entitled to injunctive relief against Sault Tribe,[4] they nevertheless argue in their Response Briefs that the 2023 Decree meets the standard for injunctive relief. Federal Resp. (ECF 36) 41-42; State Resp. (ECF 33) 34-38; Grand Traverse Resp. (ECF 35) 42-54. But the Supreme Court's four-factor test for a permanent injunction is mandatory and must be met ***before*** a court may grant such relief. *eBay Inc. v. MercExchange, LLC*, 547 U.S. 388, 391 (2006). A district court "must make specific findings concerning the four injunction factors, unless the issue can be resolved on fewer factors." *Gas Nat. Inc. v. Osborne*, 624 F. App'x 944, 948 (6th Cir. 2015). In particular, an injunction is "unavailable absent a showing of irreparable injury, a requirement that cannot be met where there is no showing of any real or immediate threat that the plaintiff will be wronged again—a 'likelihood of substantial and immediate irreparable injury.'" *Id*. at 949 (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983)). Neither the Stipulating Parties nor the District Court met any of these requirements below, and the Stipulating Parties' *post*

[4] The Stipulating Parties should have recognized the need to seek injunctive relief, given that parties have previously done so in this case. *E.g.*, *United States v. Michigan*, 534 F.Supp. 668, 669 (W.D. Mich. 1982) ("The Tribes seek an affirmative injunction making effective certain regulations proposed by the Chippewa-Ottawa Treaty Fishery Management Authority."); R. 579 and 601, Sault Tribe App'x 14-31, 34-59 (seeking injunctions requiring the State to close certain areas to State-licensed commercial fishers).

hoc rationalizations are insufficient to correct these fundamental flaws. *See eBay*, 547 U.S. at 394 ("Because we conclude that neither court below correctly applied the traditional four-factor framework that governs the award of injunctive relief, we vacate the judgment of the Court of Appeals, so that the District Court may apply that framework in the first instance."); *Gas Nat.*, 624 F. App'x at 948-49 ("Absent the requisite findings and reasons for the injunction, this court will vacate the injunction and remand for further proceedings.").[5]

II. This Court can, and should, consider Sault Tribe's permanent injunction argument.

This Court can, and should, consider Sault Tribe's permanent injunction argument. Sault Tribe's arguments below were sufficient to preserve its permanent injunction argument for appeal. Regardless, this Court has the discretion to consider Sault Tribe's permanent injunction argument and should do so.

A. Sault Tribe's arguments below were sufficient to preserve its argument for appeal.

The Sixth Circuit "recognize[s] a distinction between failing to properly raise a *claim* before the district court and failing to make an *argument* in support of that claim." *Leonor v. Provident Life & Accident Co.*, 790 F.3d 682, 687 (6th Cir. 2015)

[5] Unlike Sault Tribe's permanent injunction argument, which raises purely legal arguments in support of a claim it properly raised below, the Stipulating Parties ask this Court to make both factual and legal determinations for which no record below exists and which should be made by the District Court in the first instance.

(emphasis added). "[A]s long as the issue itself was properly raised" below, no forfeiture results on appeal. *United States v. Reed*, 993 F.3d 441, 453 (6th Cir. 2021). "Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below." *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992). Having raised the claim below that the District Court could not impose the 2023 Decree on it over its objection and without adjudicating the merits, Sault Tribe may now make additional arguments in support of that claim.

Sault Tribe's arguments below were sufficient to preserve its permanent injunction argument. Sault Tribe noted below that the proposed decree purported to bind Sault Tribe and significantly restrict and limit Sault Tribe's Treaty rights. Objections to Proposed Decree, R. 2077, PageID# 12807. It argued that absent its consent to the proposed decree, there was no basis upon which the District Court could enter the proposed decree without first conducting a trial and issuing findings of fact and conclusions of law. *Id.* at PageID# 12804-05. It further argued that there had been no showing of irreparable harm, *id.* at PageID# 12805-06,[6] a requirement for issuance of a permanent injunction. *Gas Nat.*, 624 F. App'x at 949. These

[6] Sault Tribe referenced this Court's standard for State regulation of Tribal fishing, but the argument is the same—a showing of irreparable harm is required before the District Court may impose regulations on a party over its objection.

arguments closely parallel Sault Tribe's permanent injunction argument in this appeal—*i.e.*, that the 2023 Decree operates as an injunction against Sault Tribe because it imposes significant restrictions and obligations on Sault Tribe, that the District Court lacked authority to bind Sault Tribe to the 2023 Decree absent Sault Tribe's consent or an adjudication on the merits, and that there was no showing of an entitlement to injunctive relief (including irreparable harm).

B. Regardless, this Court can, and should, consider the permanent injunction argument.

Regardless, this Court has discretion to consider the permanent injunction argument and should do so. The general practice not to address arguments raised for the first time on appeal is "not jurisdictional," and courts retain discretion to deviate from it. *Johnson v. Ford Motor Co.*, 13 F.4th 493, 503-04 (6th Cir. 2021). Courts consider: (1) whether the issue newly raised on appeal is a question of law, or whether it requires or necessitates a determination of facts; (2) whether the proper resolution of the new issue is clear and beyond doubt; (3) whether failure to take up the issue for the first time on appeal will result in a miscarriage of justice or a denial of substantial justice; and (4) the parties' right under our judicial system to have the issues in their suit considered by both a district judge and an appellate court. *Id.* at 504 (quoting *Friendly Farms v. Reliance Ins. Co.*, 79 F.3d 541,545 (6th Cir. 1996)). Here, the questions are whether the 2023 Decree is an injunction and, if so, whether

the District Court erred in entering it when the Stipulating Parties did not meet the standard for injunctive relief and the District Court did not adjudicate the merits of a request for injunctive relief. Those are questions of law that do not require further factual determination and that have been briefed in this appeal with sufficient clarity and completeness for this Court to decide the issues. Failure to take up this issue on appeal will result in a miscarriage of justice because the District Court plainly erred in entering a decree that constitutes a permanent injunction against Sault Tribe, restricting its sovereignty and Treaty rights, without either its consent or an adjudication on the merits. Under these circumstances, this Court can, and should, consider Sault Tribe's permanent injunction argument, even if it determines that it was raised for the first time on appeal. *See Johnson*, 13 F.4th at 504-05 (proceeding to consider arguments under similar circumstances).

C. Sault Tribe is not judicially estopped from making its permanent injunction argument.

The United States additionally argues that Sault Tribe should be judicially estopped from making its permanent injunction argument because it supported entering the 1985 Decree over the objections of Bay Mills. Fed. Resp. 38. Not so.

Judicial estoppel "is an equitable doctrine invoked by a court at its discretion" to prevent "improper use of the judicial machinery." *New Hampshire v. Maine*, 532 U.S. 742, 750 (2001). In determining whether to apply judicial estoppel: (1) a

party's later position must be "clearly inconsistent" with its earlier position; (2) judicial acceptance of an inconsistent position in a later proceeding would create "the perception that either the first or the second court was misled"; and (3) the party would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. *Id.* at 750-51. "[C]ourts should exercise special restraint in applying estoppel principles against" governments, like Sault Tribe. *Reynolds v. Comm'r of Internal Revenue*, 861 F.2d 469, 474 (6th Cir. 1988); *see also New Hampshire*, 532 U.S. at 755 (discussing circumstances in which estoppel should not apply to governments); *In re Ohio Execution Protocol*, 860 F.3d 881, 891 (6th Cir. 2017) (when judicial estoppel "is invoked against a state, it must be 'construed narrowly'").

It would be inappropriate to employ judicial estoppel against Sault Tribe here. Sault Tribe's position now is not "clearly inconsistent" with its position in 1985. As discussed in Sault Tribe's Opening Brief at 19, there are several fundamental differences between the situations in 1985 and 2023. Most importantly, at a pre-trial conference on May 6, 1985, counsel for all parties (including Bay Mills) "agreed that the court could choose one of the two plans." *United States v. Michigan*, 12 I.L.R. 3079, 3080 (W.D. Mich. 1985). The substantive briefing and arguments by counsel to which the United States points occurred *after* that agreement. *Id.* Accordingly, even if any arguments made by Sault Tribe's counsel nearly 40 years

ago could provide the basis for a judicial estoppel argument, those arguments merely advocated a potential outcome to which Bay Mills itself had agreed. That is not the case here. The differences between 1985 and 2023 also obviate the risk of any "perception that either the first or the second court was misled," and of any unfair advantage to Sault Tribe or unfair detriment to the Stipulating Parties (which does not exist in the first place).

The cases upon which the United States relies to support its estoppel argument, Fed. Resp. 38, are inapposite. *See New Hampshire*, 532 U.S. at 745 (applying judicial estoppel to New Hampshire's claim to jurisdiction over an entire river when it had definitively agreed in a previous consent decree to a boundary at the midpoint of the river); *Mirando v. U.S. Dep't of Treasury*, 766 F.3d 540, 545 (6th Cir. 2014) (applying judicial estoppel to a taxpayer's claim for a tax refund when the taxpayer had previously pled guilty to tax evasion for the tax years in question). In 1985, Sault Tribe merely advocated the adoption of a decree that was one of two options all parties had agreed the District Court could choose from. Now, it resists the imposition on it of a decree to which it never agreed. Those positions are not inconsistent, like the ones in *New Hampshire* and *Mirando* were.

Most importantly, Sault Tribe is not trying to game the system, thus implicating judicial estoppel considerations. This is a highly complex case involving seven sovereign governments and spanning five decades. Over decades,

circumstances change, unanticipated situations arise, and parties adapt accordingly. Even if Sault Tribe *had* changed its position (it did not), a government's "change in policy in response to unforeseen circumstances . . . is hardly the kind of inconsistency that warrants estoppel." *Ohio Execution Protocol*, 860 F.3d at 892.

III. The 2023 Decree was not an appropriate exercise of the District Court's equitable authority.

"If a court fails to apply the proper standard for a permanent injunction, it is no answer to recite the obvious fact that the court acted in equity."[7]

Sault Tribe does not challenge the District Court's equitable authority to issue appropriate orders in this case, including orders over the objection of a party, when it follows the required process. Indeed, that is the very function of the District Court. Any implication by the Stipulating Parties that Sault Tribe takes a position to the contrary is a straw man argument. What Sault Tribe objects to is the lack of due process afforded to it by the District Court and the legal errors committed by the District Court in this case.

The Stipulating Parties argue that (1) the District Court has the equitable authority to issue orders, and (2) the District Court has previously issued orders regulating the fishery in this case; *therefore* (3) the District Court had the authority to issue the 2023 Decree. *E.g.*, State Resp. 29-34; Federal Resp. 31-36. But that is

[7] *Kansas v. Nebraska*, 574 U.S. 445, 491 (2015) (Thomas, J., concurring).

a syllogistic fallacy—the two premises are correct, but the conclusion does not follow from them and is incorrect.

A district court's equitable authority does not grant it unbridled power to issue any order it wishes without either the consent of an impacted party or an adjudication on the merits. The examples cited by the Stipulating Parties of previous orders in this case do not support their position that the District Court properly entered the 2023 Decree. Finally, the 2023 Decree is not an equitable apportionment; even if it were, it would be improper.

A. A court's equitable authority is not unbounded.

Tellingly, the Stipulating Parties cite little authority to support their position that the District Court's equitable authority permitted it to bind Sault Tribe to the sweeping requirements of the 2023 Decree absent either Sault Tribe's consent or an adjudication on the merits, though that is the crux of their argument. Contrary to the implication of the Stipulating Parties' arguments, the remedial powers of a court of equity "are not unlimited." *Missouri v. Jenkins*, 495 U.S. 33, 51 (1990) (quoting *Whitcomb v. Chavis*, 403 U.S. 124, 161 (1971)); *see also Grupo Mexicano de Desarrollo S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 321-22 (1999) (rejecting an expansive, omnipotent view of equity). "In exercising its equitable discretion . . . the district court must still provide the claimants with due process." *S.E.C. v. Basic Energy & Affiliated Res., Inc.*, 273 F.3d 657, 668 (6th Cir. 2001).

"Absence of a legal remedy does not dispense with the necessity of alleging and proving a cause of action in equity as a prerequisite to equitable relief in a federal court." *Atlas Life Ins. Co. v. W. I. Southern, Inc.*, 306 U.S. 563, 570 (1939). As the Supreme Court has explained, the obviously unacceptable alternative would be "to use each equity chancellor's conscience as a measure of equity, which alternative would be as arbitrary and uncertain as measuring distance by the length of each chancellor's foot." *Lonchar v. Thomas*, 517 U.S. 314, 323 (1996). No litigant's rights—much less a sovereign government's treaty rights—should be determined in such an arbitrary and uncertain way.

Of course, injunctive relief is itself an exercise of a court's equitable authority. *Salazar v. Buono*, 559 U.S. 700, 714 (2010). So injunctive relief is subject to the foregoing considerations and, similarly, "to be ordered only after taking into account all of the circumstances that bear on the need for prospective relief." *Id*. Accordingly, "normally a permanent or final injunction is to be granted only after a right thereto has been established at a full trial on the merits." *Skinner v. Unknown Grandson*, 2006 WL 1997392, at *11 (E.D. Mich. 2006) (quoting *Calmes v. United States*, 926 F.Supp. 582, 591 (N.D. Tex 1996); *see also Kallstrom v. City of Columbus*, 136 F.3d 1055, 1067 (6th Cir. 1998) ("Where the plaintiff establishes a constitutional violation *after a trial on the merits*, the plaintiff will be entitled to permanent injunctive relief upon showing [the requisite factors].") (emphasis

added); 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice & Procedure* § 2941 (3d ed.) ("A permanent injunction will issue only after a right thereto has been established at a trial on the merits.").

In crafting an injunction pursuant to a district court's equitable authority, "[t]he proper scope of an injunction is to enjoin conduct *which has been found* to have been pursued or is related to the *proven* unlawful conduct." *E.E.O.C. v. Wilson Metal Casket Co.*, 24 F.3d 836, 842 (6th Cir. 1994) (emphases added); *see also Grupo Mexicano*, 527 U.S. at 333 (holding that the District Court had no authority to issue a preliminary injunction pending adjudication of the relevant claim).

Particularly in dealing with governments, "one of the most important considerations governing the exercise of equitable power is a proper respect for the integrity and function of . . . government institutions." *Jenkins*, 495 U.S. at 51. And "a court should be particularly cautious when contemplating relief that implicates public interests." *Salazar*, 559 U.S. at 714.

The Stipulating Parties do not explain why the 2023 Decree is not an injunction (it is) or why the District Court should be permitted to order relief of an injunctive nature without following the well-established requirements for a federal court to grant injunctive relief (it should not). Nor do they address the implications of allowing a federal district court to circumvent these well-established requirements, or to issue relief of the nature issued here. Instead, they simply claim

the 2023 Decree constitutes some *other*, amorphous exercise of the District Court's equitable authority, without identifying the relevant legal standards for the District Court's exercise of the asserted authority. *See* State Resp. 29-34; Fed. Resp. 31-36.

Sault Tribe's sovereignty and Treaty rights are too important to be restricted in the arbitrary and uncertain manner advocated by the Stipulating Parties and cautioned against by the Supreme Court. Well-established standards for federal courts' issuance of consent decrees, permanent injunctions, equitable apportionments, and other forms of equitable relief exist for a reason. This Court should decline the Stipulating Parties' invitation to disregard these well-established standards. Federal district courts sitting in equity are not omnipotent, *Grupo Mexicano*, 527 U.S. at 321-22, nor should they be. If a federal district court intends to order equitable relief that walks, swims, and quacks like a permanent injunction, then it must follow the well-established standards for issuing a permanent injunction.

B. Supreme Court precedent disfavors decrees of this nature.

As discussed in Sault Tribe's Opening Brief at 43-51, if the 2023 Decree is construed as a consent decree, it is improper for various reasons, including because: (1) it does not further the objectives of the law on which the complaint is based; (2) it primarily imposes obligations on the Plaintiff Tribes, absent any violation of the United States Constitution or federal law by the Tribes; and (3) it improperly deprives the parties of their sovereign and legislative powers. While these

authorities are not directly on point (because there is no consent decree absent Sault Tribe's consent, *Texas v. New Mexico*, 144 S.Ct. 1756 (2024)), they underscore the importance of the judicial *process* and of limitations on federal court jurisdiction. And if these principles apply when all parties have *consented* to a decree, they should apply with even more force when a decree is being imposed on a party without its consent.

Indeed, similar parameters apply to the issuance of a permanent injunction. As discussed above and in Sault Tribe's Opening Brief at 36-37, 46-47, federal district courts should grant permanent injunctions only sparingly, the scope of the injunction should be limited to proven unlawful conduct, and even higher standards apply when the party to be enjoined is a government.

Again, this Court should not allow the Stipulating Parties to circumvent these important limitations on a federal court's exercise of its equitable authority by the simple expedient of characterizing the 2023 Decree as some *other*, amorphous exercise of the District Court's equitable authority.

C. The Stipulating Parties' examples of previous orders prove the impropriety of the 2023 Decree.

The Stipulating Parties cite several examples of previous orders regulating the fishery in this case, claiming that these demonstrate the District Court's equitable authority to enter the 2023 Decree. However, each of these examples is easily

distinguishable. Indeed, the distinctions demonstrate the impropriety of the 2023 Decree.

First, the Stipulating Parties point to lapsed federal rules that this Court maintained on an interim basis in 1981. State Resp. 30-31; Fed. Resp. 40-41. But there, the *Tribes* supported the continuation of the lapsed federal regulations "as a regime of *tribal self-regulation*." *United States v. Michigan*, 653 F.2d 277, 279 (6th Cir. 1981) (emphasis added). They did not ask for the regulations to be imposed on any party against its will. Moreover, this Court only maintained the regulations on an interim basis pending remand. *Id*. Notably, in that same decision, this Court declined to impose on the Tribes alternative regulations proposed by the State, because the parties "[had] not introduced proof" on the subject and the State had not carried its burden of showing by clear and convincing evidence that it is highly probable that irreparable harm will occur and that the need for regulation exists. *Id*.

Second, the Stipulating Parties point to intertribal regulations the District Court adopted in 1982. State Resp. 30-31. What they do not mention is that in that instance, the *Tribes* sought an injunction making effective intertribal regulations *they* had adopted to govern their *own* fishing. *Michigan*, 534 F.Supp. at 669. They did *not* seek to impose the regulations on the State. Even so, the District Court applied the preliminary injunction standard, determining that it had been met. *Id*.

Third, the Stipulating Parties point to the District Court's closures of certain areas in 1982 and 1983. State Resp. 30-31. They again fail to mention, however, that the Tribes also moved for injunctive relief in those instances. R. 2080-1, PageID# 12883; R. 579 and R. 601, Sault Tribe App'x at 14-31, 34-59. And importantly, the eventual orders were entered *pursuant to the parties' stipulation*. R. 2080-1, PageID# 12883; R. 582 and 603, Sault Tribe App'x at 32-33, 60-62.

None of these situations are comparable to the 2023 Decree. In none of these examples did the District Court (or this Court) impose restrictions or obligations on a party against its will and without an adjudication of the merits. Instead, the District Court imposed restrictions only when parties proved their entitlement to them *or* pursuant to the *actual* agreement of the parties. In short, these examples support *Sault Tribe's* position, *not* the Stipulating Parties' position.

Finally, the Stipulating Parties point to the adoption of the 1985 Decree. State Resp. 31; Fed Resp. 34. True, Bay Mills objected to the proposed decree in 1985 (albeit after first agreeing to it and asking the District Court to approve it). Opening Br. 19. But as much as the Stipulating Parties seek to minimize it, the fact remains that *all parties agreed the District Court could choose one of the two proposed agreements*. *United States v. Michigan*, 12 I.L.R. 3079, 3080 (W.D. Mich. 1985).

That is not the case here and it is a critical difference. The District Court also stated that if it did not choose one of the two proposals, then it would hold a full trial on the merits. That is what should have happened here, where Sault Tribe *never* agreed to entry of the 2023 Decree against it.

D. The 2023 Decree is not an allocation order or, if so, was improperly issued.

In an effort to manufacture some legitimate basis for the District Court's issuance of the 2023 Decree, the Stipulating Parties suggest that the 2023 Decree is an allocation order issued pursuant to the District Court's equitable authority to apportion scarce resources. State Resp. 29-32; Fed. Resp. 35-36. Neither the 2023 Decree itself nor applicable law supports that position.

Preliminarily, the Stipulating Parties' argument is a red herring. The 2023 Decree is *not* an allocation order. The District Court's lengthy Opinion does not characterize the 2023 Decree as such, nor does its discussion of the Standard of Review mention allocation or any legal standards that apply to an equitable apportionment. *See* Opinion, R. 2130, PageID# 15105-06. The 2023 Decree itself is 66 pages, covering a broad range of topics relating to regulation of the fishery in the Treaty waters, including fishing areas, fishing gear, spawning closures, management of various species, stocking, charter boat operations, subsistence fishing, the Technical Fisheries Committee, information gathering and sharing,

dispute resolution, and more. R. 2132, PageID# 15237-39. Only two brief provisions of the 2023 Decree deal with allocation at all and they merely address how the Stipulating Parties agreed that the Tribes (including Sault Tribe, though Sault Tribe never agreed) and the State would allocate their respective harvests of just two species—Lake Trout and Whitefish—in certain areas. *Id*. at PageID# 15270-71. To characterize the 2023 Decree as an "allocation order" when it is premised on the agreement of the Stipulating Parties (not on adjudicated findings of fact and conclusions of law by the District Court), when such a small portion of it pertains to allocation (of just two species), and when it goes far beyond allocation and imposes many other restrictions and obligations on the parties, is disingenuous at best.

The inclusion of a "zonal plan" (*i.e.*, areas where the Tribes can and cannot fish) similar to the 1985 Decree does not transform the 2023 Decree into an allocation order. The "zonal plan" was primarily an effort to address social conflict, not a method of allocation. In the District Court's decision adopting the 1985 Decree, the District Court *distinguished* "Zone Management" from "a Percentage Allocation Plan," and much of its discussion of the zonal plan centered around the avoidance of social conflict (*i.e.*, conflicts and violence between Tribal and non-Tribal fishers) and the need for stability (*i.e.*, fishers knowing where they can fish). *Michigan*, 12 I.L.R. at 3083-85, 3087-88. The provisions in the 2023 Decree about

where the Tribes can and cannot fish do not contain any language suggesting any particular purpose for the zones. 2023 Decree, R. 2132, PageID# 15244-61. Nor does the District Court's Opinion entering the 2023 Decree suggest that the purpose of the zonal plan is to allocate the resource—rather, it likewise cites reduction of social conflict as the first feature of the zonal plan. Opinion, R. 2130, PageID# 15164. Thus, provisions about where the Tribes can and cannot fish do not make the 2023 Decree an allocation order.

Federal courts do not make allocations of natural resources between sovereigns lightly. The Supreme Court prefers that sovereigns reach agreement amongst themselves. *Florida v. Georgia*, 585 U.S. 803, 809 (2018). If they cannot, in light of the parties' sovereignty, a complaining sovereign "must bear a burden that is 'much greater' than the burden ordinarily shouldered by a private party seeking an injunction." *Id*. at 816. A sovereign seeking an equitable apportionment "must prove by clear and convincing evidence some real and substantial injury or damage." *Idaho ex rel. Evans v. Oregon*, 462 U.S. 1017, 1027 (1983). That determination must be based on present conditions. *Id.* at 1027-28. And the complaining sovereign must have suffered a wrong through the action of the other sovereign(s). *Florida*, 585 U.S. at 817. Moreover, extensive and specific factual findings are required. *Id.* at 819.

Though the Supreme Court has previously declined to apply the doctrine of equitable apportionment in an Indian water rights case, *Arizona v. California*, 460 U.S. 605, 616 (1983), a few lower courts have applied these principles to requests for inter-sovereign allocations involving Indian tribes as well. *E.g.*, *United States v. Washington*, 573 F.3d 701, 707-08 (9th Cir. 2009); *Mille Lacs Band of Chippewa Indians v. Minnesota*, 124 F.3d 904, 931 (8th Cir. 1997). Notably, however, the courts declined to make allocations in those cases because the moving parties had not met the requisite standards. *Washington*, 573 F.3d at 711; *Mille Lacs*, 124 F.3d at 931-32. Similarly, in *Lac Courte Oreilles Band of Lake Superior Chippewa Indians v. Wisconsin* (hereinafter, "*LCO*"), the court *repeatedly* declined to make an allocation, before finally agreeing to do so years later based on the full record. 653 F.Supp. 1420, 1434 (W.D. Wisc. 1987); 740 F.Supp. 1400, 1413-15 (W.D. Wisc. 1990). Thus, these cases illustrate both the high standards that apply before an inter-sovereign allocation may be made and the federal courts' caution in making such an allocation. Though the District Court might have concluded 40 years ago that "the allocation issue should be formally heard and resolved," *Michigan*, 12 I.L.R. at 3079, it does not necessarily follow that an allocation is appropriate under the current circumstances, applying the high standards discussed above. [8]

[8] Sault Tribe does not concede that an equitable apportionment would be appropriate in this case at the current time.

If this Court construes the 2023 Decree as an allocation order (it should not), then the Court should reverse because the Stipulating Parties did not meet the high standards for an equitable apportionment either. First, the Stipulating Parties neither pled nor proved by clear and convincing evidence any present, "real and substantial injury or damage" caused by any party, as required for an inter-sovereign allocation. *Idaho ex rel Evans*, 462 U.S. at 1027-28. Accordingly, no allocation order should have issued. *See id.* at 1028-29 (dismissing action for allocation of fishery because there was no evidence of current overfishing or other mismanagement by the other states, so Idaho had not carried its burden of demonstrating a substantial likelihood of injury); *Washington*, 573 F.3d at 711 (dismissing a tribe's request for a fishery allocation because the tribe "did not plead 'real and substantial injury or damage' as required for equitable allocation between sovereigns"); *Mille Lacs*, 124 F.3d at 931-32 (rejecting requests for apportionment when there had been no argument or ruling regarding the existence and nature of nontreaty fishers' rights under the treaty and county/landowner defendants had not made a showing that their right, whatever it may be, to any resource had been harmed).

Second, the record was not adequately developed to make the extensive and specific factual findings required for an inter-sovereign allocation. *Florida*, 585 U.S. at 819. Given that requirement, plus the nature, complexity, and importance of an inter-sovereign allocation, federal courts normally hold trials or conduct

extensive discovery and evidentiary proceedings on allocation issues. *See id.* at 812 (describing how the Special Master "held lengthy discovery and evidentiary proceedings" (including 18 months of discovery and 7.2 million pages of documents) in considering a water rights allocation matter between states); *Idaho ex rel. Evans*, 462 U.S. at 1023-24 (referencing that a trial was held in a fishery allocation matter between states); *United States v. Washington*, 157 F.3d 630, 652 (9th Cir. 1998) (describing how the district court allocated the shellfish resource between tribal and non-tribal fishers based on "evidence presented at trial"); *LCO*, 740 F.Supp. at 1414 (stating that the "full development of the factual record makes it possible" to address "the issue of allocation"). Even the District Court in this case originally scheduled the allocation issue for trial. *United States v. Michigan*, 12 I.L.R. 3079, 3079 (W.D. Mich. 1985).

Third, the District Court's Opinion did not discuss or apply the standard for an equitable apportionment between sovereigns. It did not identify any "real and substantial injury or damage" caused by any party, as required for an inter-sovereign allocation. *Idaho ex rel. Evans*, 462 U.S. at 1027-28. Nor did it make the extensive and specific findings of fact required to support such a determination. *Florida*, 585 U.S. at 819.

In summary, the 2023 Decree does *not* constitute an allocation order. Or, if construed as an allocation order, it was improperly entered. As noted above, the

Supreme Court prefers for sovereigns to reach agreement amongst themselves regarding allocation. *Id.* at 808. The parties have reached agreement regarding the allocation of Lake Trout and Whitefish before. 2000 Consent Decree, R. 1458, PageID# 3256, 3267-69. There is no reason they could not do so again, particularly once the Stipulating Parties understand that they cannot exclude Sault Tribe from negotiations or dispense with obtaining Sault Tribe's agreement.

IV. The absence of a decree does not put either the Tribes' Treaty rights or the fishery resource at risk.

The Stipulating Parties pose the *in terrorem* argument that a judicial decree is the only way to protect the fishery. *E.g.*, State Resp. 58-59; Fed. Resp. 10; Bay Mills Resp. (ECF 40) 24; Grand Traverse Resp. 52-53. It is not.

Just because something has been done a certain way in the past does not mean it is the best, much less the only, approach. As discussed in Sault Tribe's Opening Brief at 20, all parties except the State have previously advocated alternatives that do *not* involve a sweeping, court-mandated management framework. The Tribes self-regulated before the 1985 Decree. *Id.* at 15, 17, 50. The 1985 Decree even expired in 2000 without a successor decree in place, yet the sky did not fall. *Id.* at 20.

Notably, in moving for entry of the 2023 Decree, the Stipulating Parties did not allege, much less prove, any wrongdoing on Sault Tribe's part. *See* Stipulation

for Entry of Proposed Decree, R. 2042. Their parade of horribles is all hypothetical and unsupported by any evidence.

To the contrary, tribes are presumed able to self-regulate. Opening Br. 49-50. Tribes elsewhere self-regulate without triggering the demise of the resource or the imposition of state regulation. *Id.* at 50.

As a modern, fully functioning Tribal government, Sault Tribe is likewise perfectly capable of self-regulating. *Id.* at 49-50. Sault Tribe has certain Treaty Fishing Regulations in place already. Sault Tribal Code Chapter 20, Great Lakes & St. Mary's River Treaty Fishing Regs. (2024), https://saulttribe.com/government/tribal-code. These regulations further authorize the issuance of emergency fisheries management orders to avoid harm to the Tribe and/or the fishery. *Id.* at § 20.121. In addition, Sault Tribe has devoted many hours to developing a comprehensive and responsible draft regulatory framework that could be quickly implemented.

To suggest that self-regulation by Sault Tribe would cause the demise of the fishery is not only unsupported by any evidence but paternalistic and offensive. Fishing is an integral part of Sault Tribe's culture and Sault Tribe has been acting as a steward of the fishery since long before either the United States or the State of Michigan even existed. Importantly, in the unlikely event that Sault Tribe does not self-regulate responsibly, and the sovereigns are not able to resolve the situation

amongst themselves on a government-to-government basis, the other parties are not without a remedy. Any party could seek injunctive relief from the District Court.

Certainly, the fact that each sovereign's activities impact the fishery and, accordingly, the other sovereigns, suggests the need for intergovernmental cooperation. But sovereigns can cooperate in more appropriate and respectful ways than having a federal court impose a sweeping management framework on them. *See*, *e.g.*, Lake Superior Fishing Agreement 2018-2028, https://dnr.wisconsin.gov/topic/Fishing/lakesuperior/LakeSuperiorFisheryAgreement.html. Indeed, agreements between the sovereigns regarding co-management of natural resources are preferable. *See Florida*, 585 U.S. at 808.

Contrary to the State's unsupported and offensive comments about Sault Tribe's supposed desire to operate in reckless disregard of the other parties, State Resp. 57-59, Sault Tribe has expressly indicated its willingness to engage with the other parties on topics necessary to co-management of the fishery. Opening Br. 50. Notably, it is the *Stipulating Parties* who excluded Sault Tribe from negotiations (over its objections) and then succeeded in having the 2023 Decree imposed on Sault Tribe (also over its objections). Frankly, it is *their* disregard for *Sault Tribe's* rights that should concern this Court.

The Stipulating Parties further assert that the 2023 Decree is necessary to protect the Tribes'—and specifically Sault Tribe's—Treaty rights. *E.g.*, Fed. Resp.

10. But that assertion is almost laughable. First, most of the 2023 Decree's restrictions and obligations fall on the Tribes, with comparatively little restraint or imposition on the State's recreational fishing (the bulk of the State's fishing activity), which is particularly problematic considering that the *State* is the party who had to be restrained from interfering with the Tribes' Treaty rights in the first place. Opening Br. 16-17, 24-27. Second, the high standard established by this Court for the State to regulate Tribal Treaty fishing, coupled with the District Court's continuing jurisdiction in this case, provide ample protection against potential State infringement of the Treaty right.

Finally, the Stipulating Parties ask this court to continue to bind Sault Tribe to the 2023 Decree pending remand. State Resp. 49; Fed. Resp. 61. For the reasons discussed above, that is neither appropriate (because there is no basis for imposition of the 2023 Decree on Sault Tribe) nor necessary (because Sault Tribe can adequately regulate its Treaty fishing activities in the absence of the 2023 Decree and, in the unlikely event that it does not, the other parties have remedies available to them). If the Stipulating Parties wish to continue to abide by the 2023 Decree *themselves* (considering it is *their* agreement), Sault Tribe would not object to that.

V. All parties agree that the 2023 Decree is *not* a consent decree.

Although they disagree with Sault Tribe about exactly *what* the 2023 Decree is, all Stipulating Parties appear to agree with Sault Tribe that it is *not* a consent

decree. Fed. Resp. 31. If this Court agrees, then it need not reach Sault Tribe's alternative argument about the impropriety of the 2023 Decree as a consent decree.

If the Court does reach that issue, then Sault Tribe's alternative arguments stand. Opening Br. 29-31. Of additional note, the Stipulating Parties argue that a consent decree requires only a reasonableness hearing, State Resp. 39-40; Fed. Resp. 57-58, but that is *when all parties agree* to a proposed consent decree, which is not the case here. Contrary to the federal government's argument, Fed. Resp. 43-44, *Local No. 93* is inapposite because the consent decree in that case did not impose any restrictions or obligations on the objecting intervenor. *Local No. 93 v. City of Cleveland*, 478 U.S. 501, 529 (1986). Here, a trial was indeed required, for the reasons stated in Sault Tribe's Opening Brief at 39-42.

VI. Arguments that Sault Tribe should be bound *in perpetuity* to sweeping restrictions on its Treaty rights and sovereignty because it previously agreed to the 1985 Decree and the 2000 Consent Decree are directly contrary to the plain language of those decrees and to applicable law.

Incredibly, the Stipulating Parties argue that because Sault Tribe agreed to the 1985 Decree and the 2000 Consent Decree, it is somehow bound in perpetuity to a regulatory framework of that nature. But that is directly contrary to the plain language of the decrees and to applicable law.

A. The plain language of the decrees demonstrates that the parties intended them to expire as of a definite date and have no effect thereafter.

The plain language of both the 1985 Decree and 2000 Consent Decree was exceptionally clear that the parties intended each decree to expire as of a definite date, have no effect thereafter, and create no precedent. Opening Br. 19-21. Given the significance of the Treaty rights and the restrictions the decrees placed on those rights, those provisions were essential to the agreements—the Tribes would not have agreed to restrict their Treaty rights forever.

B. Federal courts should not purport to bind litigants to consent decrees (or similar decrees) *in perpetuity*.

Federal courts should not purport to bind litigants to consent decrees (or similar decrees) *in perpetuity*. A consent decree "must be temporary in nature and terminate" when the violation of federal law has been corrected. *Williams v. Vukovich*, 720 F.2d 909, 922 (6th Cir. 1983). Similarly, injunctions "are one of the law's most powerful weapons. Ongoing injunctions should be dissolved when they no longer meet the requirements of equity." *Sweeton v. Brown*, 27 F.3d 1162, 1166 (6th Cir. 1994). Temporal limitations are particularly important when, as here, a decree will deprive future government officials of their designated legislative and executive powers. Opening Br. 47-51.

C. The provisions of the decrees do not constitute the law of the case.

The Stipulating Parties attempt to treat the provisions of the 1985 Decree and 2000 Consent Decree essentially as the law of the case. Grand Traverse is the most

direct on this point, expressly arguing that the 1985 "zonal plan" constitutes law of the case. Grand Traverse Resp. 41-42. The other Stipulating Parties are more abstruse on this point, but their arguments are still premised on the underlying idea that Sault Tribe should be bound to the 2023 Decree because of the history of this case. *See, e.g.*, Bay Mills Resp. 24-25 (implying that Sault Tribe should be bound to the 2023 Decree because it was "heretofore participating" in the management frameworks of the last several decades); State Resp. 44-46 (arguing that certain restrictions in the 2023 Decree are appropriate because of the history and current status of State commercial fishing in this case); Fed. Resp. 48-51 (arguing that binding Sault Tribe to the 2023 Decree is necessary based on the last several decades of "court-entered management decrees"). But the provisions of the prior decrees do not constitute the law of the case.

The law of the case doctrine provides "that when a court *decides* upon *a rule of law*, that decision should continue to govern the same issues in subsequent stages in the same case. *Scott v. Churchill*, 377 F.3d 565 (6th Cir. 2004) (emphases added) (quoting *Arizona v. California*, 460 U.S. 605, 618 (1983)). The doctrine "applies only to issues that were actually decided, whether explicitly or by necessary implication." *Moody v. Mich. Gaming Control Bd.*, 871 F.3d 420, 425 (6th Cir. 2017). Moreover, the law of the case doctrine is of questionable applicability in a complex, 50-year-old case like this, where jurisdiction to accommodate changed

circumstances is retained. *Arizona v. California*, 460 U.S. 605, 618-19 (1983). "Where there is substantial doubt as to whether a prior [court] actually decided an issue, the district court should not be foreclosed from considering the issue on remand." *Westside Mothers v. Olszewski*, 454 F.3d 532, 539 (6th Cir. 2006).

"In the case of a judgment entered by . . . consent . . . none of the issues is actually litigated." *Arizona*, 530 U.S. at 414 (quoting Restatement (Second) of Judgments § 27 cmt. e (Am. Law. Inst. 1982)). And a consent decree typically does not involve decision by a court. 18B Charles A. Wright, *et al*., Federal Practice & Procedure § 4478 (3d ed.); *see also United States v. City of Miami*, 664 F.2d 435, 440 (5th Cir. 1981) ("Whether complete or partial, the agreement of the parties is not equivalent to a judicial decision on the merits."). When presented with a proposed consent decree, a court has "no occasion to resolve the merits of the disputed issues or the factual underpinnings of the various legal theories advanced by the parties." *Lorain NAACP v. Lorain Bd. of Educ.*, 979 F.2d 1141, 1151 (6th Cir. 1992) (quoting *Vukovich*, 720 F.2d at 920).

Here, the District Court entered a consent decree in 2000 and the substantial equivalent of a consent decree in 1985. In 2000, the parties filed a Stipulation for Entry of Consent Decree, R. 1457, PageID# 3401, and the District Court simply entered the Consent Decree as requested, with no findings of fact, conclusions of law, or other analysis. R. 1458, PageID# 3216. Accordingly, the District Court

decided *nothing* in 2000, other than whether to enter the 2000 Consent Decree. In 1985, the District Court's opinion was much more extensive. *See Michigan*, 12 I.L.R. 3079 (W.D. Mich. 1985). But its analysis was focused on making a "fair and equitable decision" about whether to issue the proposed decree as a whole. *Id.* at 3081. Its purpose was not to adjudicate the merits of the issues or the factual underpinnings of the decree provisions. In either case, the District Court did not make any determinations regarding the parties' entitlement to whatever the decrees afforded them. Nor did the plain language of the respective decrees purport to definitively determine any of the issues addressed—to the contrary, the decrees comprised agreements that the parties expressly stated would expire on a date certain and would thereafter have no further effect. Those agreements are now expired, and their terms do not constitute the law of the case. But even if, for argument's sake, they did, neither this Court nor the District Court would be precluded from revisiting them. *Howe v. City of Akron*, 801 F.3d 718, 740 (6th Cir. 2015); *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988).

VII. The merits of the 2023 Decree are not at issue in this appeal.

The Stipulating Parties paternalistically purport to decide for Sault Tribe what restrictions on Sault Tribe's Treaty rights and infringements on Sault Tribe's sovereignty are acceptable. They have concluded (not only for themselves, but also purportedly on Sault Tribe's behalf) that the 2023 Decree strikes an appropriate

balance between protection of Treaty rights and protection of the resource. *E.g.*, State Resp. 43-44; Fed. Resp. 26-27. But their arguments regarding the merits of the 2023 Decree (and about Sault Tribe's lack of evidence going to the merits) are irrelevant.

As an initial matter, this case is actually about *restraining the State's unlawful infringement of the Tribes' Treaty rights*, not about protecting Treaty rights or resources in other ways or restraining the Tribes' actions in any way. Leaving that aside for purposes of argument, the 2023 Decree could be the *perfect* framework for the regulation of the fishery (it is not[9]), yet it still would not be permissible because of the lack of due process and legal errors.

The actual merits of the 2023 Decree are not at issue in this appeal, except to the extent that they illustrate the injunctive nature of the 2023 Decree by the obligations and restrictions the 2023 Decree places on Sault Tribe, or the impropriety of a federal district court entering a decree like the 2023 Decree. Sault Tribe challenges the District Court's entry of the 2023 Decree *as a whole*, not any specific

[9] Among other things, the 2023 Decree restricts where Sault Tribe may fish in its ancestral waters, limits what fishing gear it may use (including prohibiting certain traditional gear), limits the species and quantify of fish it may harvest, and subjects it to onerous and unreciprocated information-sharing obligations. All of this is without Sault Tribe's consent or an adjudication on the merits. As an overarching matter, the 2023 Decree also prevents Sault Tribe from exercising its sovereignty and making its own determinations about how best to regulate its Treaty fishing activities.

provisions of the 2023 Decree. This Court should disregard the Stipulating Parties' arguments about the merits of the 2023 Decree and about any evidence presented (or not presented, as the case may be) pertaining to the merits. Instead, what is both relevant and indisputable is that the 2023 Decree imposes significant restrictions and obligations on Sault Tribe without its consent and without an adjudication on the merits.

VIII. All parties agree that the 2000 Consent Decree is expired.

In an abundance of caution, Sault Tribe addressed the possibility that this Court might conclude that the District Court's indefinite extension of the 2000 Consent Decree is no longer moot if this Court reverses the District Court's entry of the 2023 Decree. However, the Stipulating Parties argue that the indefinite extension is expired and take the position that it cannot be revived.[10] State Resp. 47; Fed. Resp. 51-52. If this Court agrees, Sault Tribe would not take issue with that conclusion. If this Court does consider the District Court's indefinite extension of the 2000 Consent Decree, then Sault Tribe stands by the arguments set forth in its Opening Brief at 51-62.

IX. This Court should decline Grand Traverse's request for a declaratory judgment.

[10] The Stipulating Parties do not explain how their argument that the 2000 Consent Decree is expired can be reconciled with their argument that Sault Tribe somehow remains bound to a similar framework by virtue of its previous agreement to the 2000 Consent Decree.

Grand Traverse asks this Court for a declaratory judgment that the "zonal plan" from the 1985 Decree is the law of the case. Grand Traverse Resp. 56. That request is not within this Court's jurisdiction, is procedurally improper and nonsensical, and should be adjudicated and determined by the District Court in the first instance. This Court should decline to issue the requested declaratory judgment.

"It is well-settled that the Declaratory Judgment Act cannot serve as an independent basis for federal subject matter jurisdiction." *Mich. S. R.R. Co. v. Branch & St. Joseph Cntys. Rail Users Ass'n, Inc.*, 287 F.3d 568, 575 (6th Cir. 2002). It only applies to an "actual controversy within [a court's] jurisdiction." 28 U.S.C. § 2201(a). The subject of this appeal, over which this Court has jurisdiction, is the District Court's improper entry of the 2023 Decree. Grand Traverse's request for a declaratory judgment is unrelated to the appeal and Grand Traverse does not identify any basis for this Court's jurisdiction over the request. Moreover, Grand Traverse has never filed a pleading seeking the requested relief, as required by the Declaratory Judgment Act. *See* 28 U.S.C. § 2201(a). Nor has it moved either the District Court or this Court for such relief.

Even assuming jurisdiction (*arguendo*), an issue of this importance (determining where the Tribes may exercise their Treaty fishing rights within their ancestral waters) should be fully adjudicated by the District Court in the first

instance. The Supreme Court has cautioned against declaratory judgments on issues of public importance and has directed that they "should rest on an adequate and full-bodied record" if issued. *Pub. Affairs Assocs., Inc. v. Rickover*, 369 U.S. 111, 113 (1962). As the District Court recognized, "[t]his question of law will have a cascade of consequences." Opinion, R. 1892, PageID# 10823. The District Court further noted the "nuanced, fact-heavy issues" involved "that are impossible to evaluate at this stage." *Id.* at PageID# 10821.

There are many other reasons Grand Traverse's requested declaratory judgment should be denied, including, as discussed above, that the provisions of the 1985 Decree (including the zonal plan) are *not* law of the case. But fully briefing the impropriety of the requested declaratory judgment would be beyond the scope of this Reply Brief, so if the Court considers entertaining Grand Traverse's request (which it should not), Sault Tribe respectfully requests the opportunity to more fully brief the issue.

CONCLUSION

This Court should reverse the District Court's entry of the 2023 Decree and remand for further proceedings consistent with the requirements of a request for permanent injunctive relief.

This Court should find that the 2000 Consent Decree is expired, whether for the reasons set forth in Sault Tribe's Opening Brief or in the Stipulating Parties' Response Briefs.

This Court should not impose the 2023 Decree or any other restrictions on Sault Tribe pending remand, because it should presume Sault Tribe able to self-regulate.

Respectfully Submitted,

/s/ Ryan J. Mills
Ryan J. Mills
Sault Ste. Marie Tribe of Chippewa Indians
523 Ashmun St.
Sault Ste. Marie, MI 49783
906-635-6050
Email: rmills@saulttribe.net

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 8,832 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirement of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

/s/ *Ryan J. Mills*
Ryan J. Mills
Attorney at Law
Sault Ste. Marie Tribe of Chippewa Indians
523 Ashmun St.
Sault Ste. Marie, MI 49783
906-635-6050
Email: rmills@saulttribe.net

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of July 2024, a copy of the foregoing was served on all parties or their counsel of record via the Court's Electronic Case Filing System.

/s/ Ryan J. Mills

SUPPLEMENTAL ADDENDUM

Pursuant to Sixth Circuit Rules 28 and 30, in addition to those docket entries designated in the Addendum to its Opening Brief, Sault Tribe designates the following additional relevant docket entries from the record of the District Court proceedings below.

Record Entry	**Description**	**Page ID #**
1457	Stipulation for Entry of Consent Decree	3401-14