

**STATEMENT OF KATHRYN L. TIERNEY
BEFORE THE
STANDING COMMITTEE ON TOURISM AND OUTDOOR RECREATION
MICHIGAN HOUSE OF REPRESENTATIVES
ON
JANUARY 20, 2016
IN SUPPORT OF
S.B. 588**

I make this statement in support of the passage of S.B. 588 on behalf of my client, the Bay Mills Indian Community. I have represented the Tribe in litigation in both Federal and State courts for over 40 years to obtain recognition of the continued existence of the rights to hunt, fish and gather, which the Tribe reserved in its cession treaty with the United States when signed on March 28, 1836.

Those cases include *People v. LeBlanc*, 399 Mich. 31, 248 N.W.2d 199 (1976), and *United States v. Michigan*, Case No. 2:73-cv-26, which was filed by the United States on behalf of the Bay Mills Indian Community in 1973 in the United States District Court for the Western District of Michigan, and which is now the oldest open case in that Court.

Over time, the emphasis in the courtrooms has changed from arguing whether the Tribe's reserved right to harvest continues to exist, and whether the State may apply its hunting and fishing laws to the harvest activities of Tribal members, to establishing detailed and complex management systems under which the harvest of all users is regulated in order to protect the natural resource and to allocate harvest opportunities. The *United States v. Michigan* case provides the framework for these efforts. Comprehensive management and allocation agreements for the 1836 Treaty-ceded Great Lakes waters have been reached in 1985 (15-year term) and in 2000 (20-year term). Another comprehensive management and allocation agreement will be negotiated to take effect in 2020.

In 2007, a permanent agreement by Consent Decree was entered by the federal court in *United States v. Michigan*, which was negotiated by the five 1836 Treaty Tribes, the United States and the State of Michigan. It contains the terms under which members of the five Tribes exercise the Treaty-reserved rights to hunt, fish, trap and gather on the lands and inland waters ceded by the Treaty. The applicable regulations for these activities are enacted by the Tribes.

The cession and Consent Decree cover more than 14 million acres of land and water in the eastern one-half of the Upper Peninsula and in the northern portion of the Lower Peninsula, south to the Grand River and along that river to western Ionia County, and then along a diagonal line to the mouth of the Thunder Bay River in Alpena. (A map attached to the Consent Decree is attached, which delineates the large area subject to the Decree.) The parties to the Consent Decree contemplated enforcement of the Tribes' regulations by Michigan law enforcement officers, but "only if, and only for so long as, the Parties are able to identify a mechanism by which Tribal law enforcement officers shall have the authority to: stop hunters and fishermen in the field in order to determine whether they are Tribal members..." [Decree ¶24.6]

Enactment of the amendments described in S.B. 588 will not end any and all disputes between the 1836 Treaty Tribes and the State regarding natural resource management issues and the methods required to best protect the environment. The bill's passage will, however, allow the Tribal and State governments to cooperate and collaborate in efforts to identify, monitor and arrest those persons whose activities place these natural resources at risk, regardless of their identity.

Resource protection and management efforts by all governments will benefit from the recognition and respect that this legislation accords to Tribal and State law enforcement personnel.

1836 Ceded Territory

(Does Not Show Disputed Area in Western Upper Peninsula)



*This depiction of the lands and inland waters within the boundaries of the territory ceded in the 1836 Treaty of Washington, 7 Stat. 491, is for illustrative purposes only and is not intended to supersede proper interpretations of the language describing those boundaries in Article I of the Treaty. All of the coordinates on this map are based upon a horizontal datum known as the 1983 datum, rather than on the ground survey. In the event that there are any future disputes arising over the actual boundary of the 1836 Ceded Territory, the parties shall resolve any such dispute by joint conducting an on the ground survey, to determine the exact coordinates of any disputed boundary.

Map Legend

- State County
- Michigan County
- Township
- Section

0 10 20 30 40 Miles

Map Data Source: Great Lakes Indian Fish & Wildlife Commission
 State of Michigan & the Tribal Council of Michigan
 Map Prepared by: Inter-Tribal Council of Michigan
 Map Projection: NAD83 UTM Zone 18N
 July 2017



UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

File No. 2: 73 CV 26
Hon. Richard A. Enslen

Plaintiff,

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

Plaintiff-Intervenors / Counter-Defendants,

vs.

STATE OF MICHIGAN, REBECCA
HUMPHRIES, DIRECTOR,
DEPARTMENT OF NATURAL
RESOURCES, CHIEF, FISHERIES
DIVISION, DEPARTMENT OF
NATURAL RESOURCES, CHIEF,
WILDLIFE DIVISION, DEPARTMENT
OF NATURAL RESOURCES, CHIEF,
LAW ENFORCEMENT DIVISION,
DEPARTMENT OF NATURAL
RESOURCES, RESOURCE
MANAGEMENT DEPUTY DIRECTOR,
DEPARTMENT OF NATURAL
RESOURCES, AND THE MICHIGAN
NATURAL RESOURCES COMMISSION,

Defendants / Counter-Claimants.

CONSENT DECREE

or a written explanation for such failure to the Tribal member's Tribe shall not constitute a defense to the citation.

24.4 Tribal members operating off-road vehicles, snowmobiles, boats or other vessels who are engaged in the exercise of a treaty-related Hunting, Trapping, Fishing or Gathering activity, shall not be subject to State vehicle or vessel registration requirements, provided that the Tribal member satisfies Tribal license requirements for the activity in question, is in compliance with applicable Tribal Hunting, Trapping or Fishing season limitations in Tribal law adopted pursuant to this Decree, and possesses evidence of being currently engaged in Hunting, Trapping, Fishing or Gathering, such as fish, game or common items related to Hunting, Trapping, Fishing or Gathering such as Fishing rods, tip-ups, firearms, traps, or nets.

24.5 On non-Tribally owned lands, operation of an off-road vehicle, snowmobile, or boat or vessel by a Tribal member in a manner that creates a threat to public safety or damage to the environment is enforceable by both State and Tribal officers under provisions of State or Tribal law or regulation, with concurrent jurisdiction in both State and Tribal court.

24.6 The provisions set forth in subparagraphs (a) through (c) of this Paragraph 24.6, by which State law enforcement officers shall have the authority to enforce Tribal regulations on non-Tribal lands, shall be effective only if, and only for so long as, the Parties are able to identify a mechanism by which Tribal law enforcement officers shall have the authority to: stop hunters and fishermen in the field in order to determine whether they are Tribal members; enforce Tribal regulations with respect to Tribal members; and, to the extent they are deputized under applicable law, enforce State regulations with respect to non-Tribal members. The State shall not be liable for the acts or omissions of Tribal law enforcement officers in the performance of their duties under this Decree and the Tribes shall not be liable for the acts or omissions of the

State's law enforcement officers in the performance of their duties under this Decree. Moreover, nothing in this Decree shall be construed to mean either that Tribal law enforcement officers are agents of the State or that State law enforcement officers are agents of the Tribes.

(a) Conservation officers of the MDNR are authorized to enforce a Tribe's regulations pertaining to Inland Article 13 Rights on non-Tribal lands and to institute proceedings in a Tribal forum through the issuance of a citation upon satisfaction of the following requirements:

(i) certification as a law enforcement officer by MCOLES, or its successor agency; and

(ii) successful completion of a cultural awareness program approved by the State and the Tribes.

MDNR shall provide the Tribes with updated lists of officers meeting these criteria.

(b) In order to assure professional, fair, and reasonable enforcement of the Tribes' regulations, any Tribe subject to this Decree may initiate a complaint of unprofessional conduct against a Michigan conservation officer, by means of filing the standard form available from the Law Enforcement Division of the MDNR. In order to assure transparency in the investigation of such charges, the chief law enforcement officer of the Tribe initiating a complaint shall be invited to:

(i) participate in the investigation of such charges; and

(ii) participate as a member of the review board that reviews the investigation, determines the validity of such charges and establishes any corrective or disciplinary actions that may be appropriate if officer misconduct is established.

(c) A MDNR conservation officer may:

(i) conduct routine inspections of boats, wagons, trailers, vehicles, snowmobiles, containers, packages, or other containers utilized by a person in a Harvesting Activity authorized by Tribal law;

(ii) stop and board any boat and stop any vehicle or snowmobile if the officer reasonably suspects there is a violation of Tribal law;

(iii) execute any process for enforcement of the provisions of Tribal law;

(iv) with or without a warrant, open, enter and examine boats, wagons, trailers, vehicles, snowmobiles and packages and other containers, in which the officer has probable cause to believe that contraband wild plants, wild animals, fish, or carcasses or parts thereof may be contained, or as part of a routine inspection authorized under subparagraph (c)(i) of this Paragraph 24.6; and

(v) if a violation occurs in the officer's presence, seize, with or without a warrant, any article which is subject to forfeiture under applicable Tribal law, or which may be required as evidence of a violation of applicable Tribal law, *provided* that any article so seized shall be delivered within 5 working days of the time of seizure into the custody of the Tribal member's Tribal forum, unless said article is immediately delivered into the custody of an officer of the Tribal member's Tribe. Officers shall exhaust all other practical means of gathering required evidence prior to seizing an article under this subparagraph.

24.7 The records of a Tribal court related to State or Tribal citations or arrests of Tribal members for alleged violations related to Hunting and Fishing under this Decree, including records of court dispositions of such citations or arrests, shall be accessible to MDNR conservation officers during normal business hours.

