



## The Grand Traverse Band of Ottawa and Chippewa Indians

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March 19, 2008

Hon. Michael D. Bishop  
Senate Majority Leader  
P.O. Box 30036  
Lansing, MI 48909-7536

Dear Senator Bishop:

By motion approved by the Tribal Council today, I have been directed to notify the Senate of this Tribe's objection to Senate Bill 860. Apparently it has not occurred to the Michigan legislature that this Tribe's rights reserved under the March 28, 1836 Treaty of Washington (7 Stat. 491) would be infringed by the water withdrawal scheme sanctioned by the proposed legislation. The State of Michigan is a party to the *United States, et al. v. Michigan, et al.* litigation pending in the United States District Court for the Western District of Michigan (File No. 2:73-CV-26). On November 2, 2007 a Consent Decree was filed (docket number 1799) in this case that confirms this Tribe's Treaty-reserved right to fish in inland rivers and streams within the 1836 cession area. This fishing right is a property right protected by the United States Constitution. *Grand Traverse Band of Ottawa and Chippewa Indians v. Director, Michigan Dep't of Natural Resources*, 971 F. Supp. 282, 288-91 (W.D. Mich. 1995), *aff'd*, 141 F.3d 635, 638-41 (6th Cir. 1998), *cert. denied*, 454 U.S. 1124 (1998).

Our understanding is that the legislation as now structured would allow water withdrawal from rivers and streams based on percentage reductions of "thriving fish populations." Any such reductions would amount to an unconstitutional taking of the Tribe's property right in fish resources of rivers and streams. Additionally, if enacted, this legislation also would be a fundamental breach of the agreement embodied within the Consent Decree, and therefore would enable the 1836 Treaty Tribes to reconsider concessions regarding commercial harvests and netting of inland lakes and streams.

Although we support legislation approving the Great Lakes Compact, we urge the Senate to approve the Compact in stand-alone legislation without being linked to the water-withdrawal legislation.

Sincerely,

Robert Kewaygoshkum  
Tribal Chairman