

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

SAGINAW CHIPPEWA INDIAN TRIBE  
OF MICHIGAN, on its own behalf and as  
*parens patriae* for its members,

Plaintiff,

v.

JENNIFER GRANHOLM, Governor of the State  
of Michigan; MIKE COX, Attorney General of the  
State of Michigan; JAY B. RISING, Treasurer of  
the State of Michigan; each in his/her official capacity,

Defendants.

Case No. 05-10296

Judge David M. Lawson

Magistrate  
Judge Charles E. Binder

**AMENDED COMPLAINT  
FOR DECLARATORY  
AND INJUNCTIVE  
RELIEF**

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The plaintiff, for its cause of action against the above-named defendants, alleges  
as follows:

**I. NATURE OF THE COMPLAINT**

1. The Saginaw Chippewa Indian Tribe of Michigan (“Saginaw Tribe” or “Tribe”) brings this action for itself and on behalf of its members against officials of the State of Michigan. Such officials have refused to acknowledge the existence of the Tribe’s six township reservation in Isabella County, Michigan as such reservation was established and recognized by Executive Order and Treaty in 1855 and Treaty in 1864

(hereafter, the “historic Isabella Reservation”), and have refused to treat such reservation as Indian country as defined by 18 U.S.C. § 1151 and other applicable federal law. As a result, the officials are directing the enforcement of state civil and criminal laws against the Tribe and its members for activities taking place within the historic Isabella Reservation but on “non-trust lands;” that is, lands that are not owned in trust by the United States for the Tribe or individual members. This lawsuit seeks prospective declaratory and injunctive relief, requiring State officials to recognize the historic Isabella Reservation as Indian country under federal law, and prohibiting such officials from enforcing Michigan state law against the Tribe and its members within the historic Isabella Reservation in a manner inconsistent with the reservation’s status as Indian country and therefore in violation of the Constitution and laws of the United States.

## **II. JURISDICTION**

2. This action arises under the Constitution and laws of the United States. This Court has jurisdiction pursuant to 28 U.S.C. § 1331; 28 U.S.C. § 1343 (a) (3) and (4); and 28 U.S.C. § 1362. This action is brought by a federally recognized Indian tribe to protect its rights under the United States Constitution and federal common law to be free from unlawful state and local government regulation, and to protect the civil rights of its enrolled members to be governed by their elected government free from unlawful interference, taxation, and regulation by state or local governments. This action involves an actual controversy requiring federal judicial relief.

### **III. VENUE**

3. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b) since the events giving rise to the claims herein arose within the Eastern District of Michigan, and the property comprising the historic Isabella Reservation is located within such District.

### **IV. PARTIES**

4. Plaintiff Saginaw Chippewa Indian Tribe of Michigan is a federally recognized tribe of Indians possessing powers of self-government over its territory and its members. The Tribe is comprised of the descendants of the historic Saginaw, Swan Creek, and Black River Bands of Chippewa (collectively referred to as the “Saginaws”). The Tribe operates pursuant to a Constitution adopted pursuant to the Indian Reorganization Act of 1934, (48 Stat. 984). The Tribe brings this action on behalf of itself and on behalf of its members.

5. Defendant Jennifer Granholm is the Governor of the State of Michigan, and as such is the administrative and executive head of the State. She is responsible for the overall adoption and administration of State agency policies and for the general execution of laws within the State.

6. Defendant Mike Cox is the Attorney General of the State of Michigan, and as such is the chief legal officer of the State. He is responsible for representing the State in legal actions, for enforcing in court various State laws and regulations, and for advising State officials and agencies about legal matters within the State’s jurisdiction.

7. Defendant Jay B. Rising is the Treasurer of the State of Michigan, and as such is responsible for implementing policies, laws, and regulations related to taxation and revenue raised by the State. Among his duties is implementing the Michigan income tax system within the State.

## **V. ACTIONS OF THE DEFENDANTS**

8. Defendants have actively asserted in government documents, enforcement activities, and judicial proceedings the legal position that only trust lands (lands owned by the United States in trust for the Tribe or its members) within the historic Isabella Reservation are Indian country under federal law. Defendants have refused to acknowledge that the entire historic Isabella Reservation continues to exist in reservation status and that therefore all land (trust land and non-trust land) within its boundaries is Indian country as recognized by federal law. As a result, defendants collectively have sought to enforce Michigan state laws and regulations against the Tribe and its members on non-trust lands within the historic Isabella Reservation. Plaintiff alleges that defendants' actions are in violation of federal law and must be curtailed.

9. Defendant Jay Rising, or agents working under his general direction, specifically has attempted to impose Michigan state income taxes against members of the Tribe who live and work on non-trust land within the boundaries of the historic Isabella Reservation, in violation of federal law.

10. Defendants Mike Cox and Jennifer Granholm have advised courts and state and local government officials that non-trust land within the boundaries of the

historic Isabella Reservation is not Indian country, resulting in the attempted application of state traffic laws, child welfare laws, and other laws within such lands, in violation of federal law.

11. Defendants' attempted application of state law to the Tribe and its members on non-trust land within the historic Isabella Reservation will continue unless this Court issues a declaratory judgment that the entire historic Isabella Reservation is Indian country under federal law, and unless this Court enjoins the defendants from attempting to enforce state laws against the Tribe and its members within such land.

## **VI. HISTORICAL FACTS**

12. The Chippewa Indians in Michigan entered into several treaties with the United States government in the early 19<sup>th</sup> century. Treaties in 1807, 1819, and 1836 resulted in the cession to the United States of much of the Lower Peninsula of Michigan.

13. The aforementioned treaties contemplated the removal of the Saginaws from Michigan. However, the removal efforts did not succeed. The Saginaws have lived near Saginaw Bay for hundreds of years.

14. The federal government's policy towards Indians was in flux during the mid-19<sup>th</sup> century.

15. Prior to the 1850s, the federal government's general Indian policy focused on removing Indians from lands that had been ceded by treaty and that were in the process of being settled by non-Indians.

16. By 1854 the government changed its general Indian policy to focus on the creation of reservations within ceded lands, with the intent of concentrating Indians on such reservations in order to protect them from the onslaught of non-Indian settlement. Commissioner of Indian Affairs George Manypenny was one of the federal government officials principally responsible for implementation of the changed federal policy.

17. Lands were first withdrawn from sale and reserved for the Saginaws in Isabella County by Executive Order dated May 14, 1855.

18. In 1855, the Saginaws and the United States entered into a treaty, referred to as the Treaty of August 2, 1855 (11 Stat. 633). Commissioner of Indian Affairs George Manypenny directed the negotiation of this treaty.

19. Article One of the Treaty of August 2, 1855 implemented the terms of the May 14, 1855 Executive Order by stating that the United States would withdraw from sale, for the benefit of the Saginaws, all the unsold public lands within the State of Michigan embraced in the following description:

First: six adjoining townships of land in the County of Isabella, to be selected by the said Indians within three months from this date, and notice thereof given to their agent.

Second: townships numbers 17 and 18 North, ranges three, four, and five east. [These lands were located on Saginaw Bay and were later relinquished to the United States by treaty in 1864.]

20. The Treaty of August 2, 1855 provided for allotments to individual members of the Saginaws on reservations at Isabella and Saginaw Bay, in a similar manner to that provided by a separate treaty between the United States and the Ottawas and Chippewas of Michigan on July 31, 1855 (11 Stat. 621).

21. Pursuant to Article One of the Treaty of August 2, 1855, the Saginaws selected 5 full and 2 half townships in the Isabella County including:

the North half of township 14, and all of townships 15 and 16, North, of range three West, the North half of township 14 and all of township 15 North, of range four West, and townships 14 and 15 North, of range five West.

The area within the designated townships constituted the Isabella Reservation. Within the reservation there were approximately 98,051 acres of unsold land available for selection and entry by the Saginaws.

22. Pursuant to Article One of the Treaty of August 2, 1855, the reservation area at Saginaw Bay within townships described as 17 and 18 North, ranges three, four, and five east, contained approximately 60,873 acres of land available to the Saginaws for selection and entry.

23. The Treaty of August 2, 1855 reflected a fundamental change in United States policy and the government's relations with the Saginaws. This treaty secured a land base for the Saginaws and relieved them from earlier threats of removal from Michigan under prior harsh United States policies. The treaty also demonstrated the

federal government's intent to provide a permanent home for the Saginaws by concentrating the Saginaws in a permanent location.

24. Article One of the Treaty of August 2, 1855 provided the Saginaws the opportunity to make allotment selections based on their marital status, age, and other relevant criteria established in the treaty. These selections were made from the unsold lands within the reservations for a term of five years. Within the reservation in Isabella County, many allotment selections were made, totaling approximately 27,932 acres.

25. Allotment selections at the reservation on Saginaw Bay were more limited than at the reservation at Isabella County, with approximately 5926 acres selected after 1855. Over time, and in part because the lands provided by the federal government were unsuitable, the Saginaws became dissatisfied with the process of land selection.

26. By 1864, the Saginaws were seeking a new treaty with the federal government to address the perceived shortcomings of the Treaty of August 2, 1855.

27. By 1864, the United States was seeking additional concessions from the Saginaws to further concentrate the Saginaws on their Isabella Reservation.

28. In 1864, the Saginaws and the United States entered into a treaty, referred to as the Treaty of October 18, 1864 (14 Stat. 657).

29. Article One of the Treaty of October 18, 1864 provided for the relinquishment by the Saginaws of the reservation at Saginaw Bay that had been set aside in the Treaty of August 2, 1855.

30. Article Two of the Treaty of October 18, 1864 provided that in consideration of the relinquishment of the reservation at Saginaw Bay, the United States

agreed to set apart for the exclusive use, ownership, and occupancy of the Saginaws all of the unsold lands within the six townships in Isabella County reserved to the Saginaws by the Treaty of August 2, 1855. The six townships of such Isabella Reservation were described as the North half township 14, and townships 15 and 16 North, of range three West; and the North half of township 14 and township 15 North, of range four West, and townships 14 and 15 North, of range five West.

31. The Treaty of October 18, 1864 confirmed the six township Isabella Reservation recognized by the Treaty of August 2, 1855.

32. The Treaty of October 18, 1864 removed the land selection restrictions of the Treaty of August 2, 1855 that had frustrated the Saginaws.

33. The Treaty of October 18, 1864 allowed individual Saginaws to select remaining unsold lands within the Isabella Reservation.

34. The Treaty of October 18, 1864 allowed the Saginaws who had made prior land selections on the Saginaw Bay reservation to make new selections at the Isabella Reservation. A total of approximately 5,600 acres of such selections were made on the Isabella Reservation.

35. Both the Treaty of August 2, 1855 and the Treaty of October 18, 1864 recognized the Saginaws as a tribal entity and repeatedly referred to the “reservation” at Isabella.

36. In the years following the Treaty of October 18, 1864, individual Saginaw Indians lost ownership of much of the land they had selected within the Isabella

Reservation, but the United States continued to treat the Saginaws as a tribe and their home at Isabella as an Indian Reservation.

37. The Saginaw Chippewa Tribe of Michigan, comprised of the descendants of members of the Saginaw, Swan Creek, and Black River Bands of Chippewa Indians residing on the Isabella Reservation, was formally organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), and the Tribe adopted a Constitution and Bylaws that were initially approved by the United States on May 6, 1937.

38. Since its organization in 1937, the Saginaw Chippewa Tribe of Michigan has governed its members, and has purchased land within the boundaries of the historic Isabella Reservation, some of which is now owned in trust for the Tribe by the United States.

## **VII. LEGAL CLAIMS**

39. The historic Isabella Reservation was created as a home for the Saginaws, and was established and recognized in the Executive Order of May 14, 1855, the Treaty of August 2, 1855, and the Treaty of October 18, 1864.

40. The historic Isabella Reservation consists of six townships of land in Isabella County, Michigan. The six townships include the entire townships of Wise, Nottawa, Isabella, Denver, and Deerfield, and the northern one-half of the townships of Union and Chippewa.

41. The United States Congress has never revoked the historic Isabella Reservation.

42. The historic Isabella Reservation is Indian country as that term is used in 18 U.S.C. § 1151 and United States Supreme Court decisions.

43. Plaintiff has no adequate remedy at law because the damages caused by Defendants' actions cannot readily be measured by monetary relief; the right of Plaintiff to a recognition of its reservation boundaries is unique and is related to the sovereignty and jurisdiction of the Tribe; and where enforcement of State laws could lead to arrest, prosecution, or state regulation of Tribal members, there is no monetary remedy available.

#### **VIII. PRAYER FOR RELIEF**

WHEREFORE, the Saginaw Chippewa Indian Tribe of Michigan respectfully prays for the following relief:

44. A declaratory judgment pursuant to 28 U.S.C. § 2201 and § 2202 and other applicable law, declaring that the six township historic Isabella Reservation, as established by Executive Order and Treaty in 1855 and affirmed by Treaty in 1864, exists today as an Indian reservation and is Indian country pursuant to federal law.

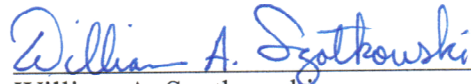
45. An Order pursuant to the Court's equity jurisdiction, 42 U.S.C. § 1983, and other applicable law, permanently enjoining Defendants, their officers, agents, servants, employees and attorneys, and anyone acting in concert with them: 1) from

asserting criminal jurisdiction over the Tribe or Tribal members within the historic Isabella Reservation in a manner that federal law would not allow in Indian country; 2) from asserting civil regulatory jurisdiction over the Tribe or Tribal members within the historic Isabella Reservation in a manner that federal law would not allow in Indian country; and 3) from taking any actions within the historic Isabella Reservation that would interfere with the rights of the Tribe and its members under federal law relating to Indian country.

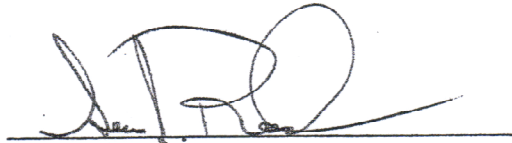
46. An Order granting any further relief as the Court may deem appropriate and just under the circumstances.

Dated: March 21, 2006

Respectfully submitted,



William A. Szotkowski  
MN Bar ID 161937  
Jacobson, Buffalo, Schoessler  
& Magnuson, Ltd.  
Energy Park Financial Center  
1360 Energy Park Drive, Suite 210  
St. Paul, MN 55108  
Tel: (651) 644-4710  
Fax: (651) 644-5904

A handwritten signature in black ink, appearing to read 'SJR', is written over a horizontal line.

Sean J. Reed  
Michigan Bar ID P62026  
Saginaw Tribe General Counsel  
7070 E. Broadway  
Mt. Pleasant, MI 48858  
Tel: (989) 775-4032  
Fax: (989) 773-4614

Attorneys for Plaintiff Saginaw Chippewa  
Indian Tribe of Michigan

Proof of Service

I hereby certify that on March 21, 2006, I electronically filed the foregoing paper with the Clerk of Court using the ECF system which will send notification of such filing to:

Todd B. Adams

s/William A. Szotkowski  
MN Bar ID 161937  
Jacobson, Buffalo, Schoessler  
& Magnuson, Ltd.  
1360 Energy Park Drive, Suite 210  
St. Paul, MN 55108  
Tel: (651) 644-4710  
bszot@jacobsonbuffalo.com