

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

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

Plaintiff,

Case No. 05-10296
Hon. David M. Lawson

Magistrate Judge: Charles E. Binder

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.

**DEFENDANTS' ANSWER TO AMENDED COMPLAINT
FOR DECLARATORY AND INJUNCTIVE RELIEF**

The State Defendants answer the Amended Complaint for Declaratory and Injunctive Relief as follows:

I. NATURE OF COMPLAINT

1 Without knowledge or information sufficient to form a belief as to the truth of the averments in the first sentence. Admit the second and third sentences, except deny that the "historic Isabella Reservation" exists. Without knowledge or information sufficient to form a belief as to the truth of the averments in the fourth sentence, except admit that the fourth sentence purports to describe the action.

II. JURISDICTION

2. Admit that the Saginaw Chippewa Indian Tribe of Michigan seeks to enforce alleged constitutional and other law of the United States in the first and second sentence that would normally grant jurisdiction to the federal court, except deny that the court has jurisdiction to award damages or to deprive the state of all jurisdiction over the alleged "historic Isabella Reservation." Deny the third sentence, except admit that the Saginaw Chippewa Indian Tribe of Michigan is a federally recognized Indian tribe. Without knowledge or information sufficient to form a belief as to the truth of the averments in the fourth sentence.

III. VENUE

3. Admit that if the court properly has jurisdiction then venue is proper.

IV. PARTIES

4. Admit the first sentence, except deny that the Saginaw Chippewa Indian Tribe of Michigan has any governmental power over the alleged "historic Isabella Reservation" except for trust land. Without knowledge or information sufficient to form a belief as to the truth of the averments in the remaining sentences of paragraph 4.

5-7. Admit.

V. ACTIONS OF THE DEFENDANTS

8. Admit the first three sentences, and deny the fourth.

9. Without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 9, except admit that the State of Michigan has attempted to impose income taxes against members of the Saginaw Chippewa Indian Tribe who do not live on trust land, except deny that this action violates federal law.

10. Without sufficient knowledge or information to form a belief as to the truth of the averments in paragraph 10, except admit that the State of Michigan, of whom Jennifer Granholm is the Governor and Mike Cox is the Attorney General, maintain that the alleged "historic Isabella Reservation" is not Indian country except for land held in trust.

11. Admit that defendants will continue to enforce state law on non-trust land within the alleged "historic Isabella Reservation" as allowed by federal and state law, and deny any remaining averments in paragraph 11.

VI. HISTORICAL FACTS

12. Admit.

13. Without knowledge or information sufficient to form a belief about the truth of the averments in paragraph 13, except admit that at one time the federal government may have contemplated the removal of the Saginaw Chippewas from Michigan, that members of the Saginaw Chippewa Indian Tribe of Michigan still remain in Michigan, and that Chippewa Indians have lived intermittently near Saginaw Bay for hundreds of years.

14. Without knowledge or information sufficient to form a belief as to the truth of averments in paragraph 14 because of vagueness.

15. Admit that prior to the 1850s, one of the federal government's Indian policies focused on removing Indians from lands that had been ceded by treaty and that were in the process of being settled by non-Indians, except deny that it was the only policy followed everywhere and for all time.

16. Admit that beginning in 1854 the federal government sometimes followed the policies advocated by Commissioner of Indian Affairs George Manypenny to create "traditional"

reservations (that is, reservations where American Indians retained their aboriginal title and rights) for American Indians within their ceded territory, except deny this was the case for the alleged "historic Isabella Reservation," and without sufficient information to form a belief about the truth of the averments in the rest of paragraph 16.

17. Without knowledge sufficient to form a belief about the truth of the averments in paragraph 17.

18. Admit, except defendants will identify the Treaty with Chippewa Indian, 11 Stat 633 (August 2, 1855), as the "1855 Saginaw Treaty."

19. Admit that article 1 of the 1855 Saginaw Treaty roughly states as averred, except deny the remaining averments of paragraph 19.

20. Admit that article 2 roughly states as averred, except deny the remaining averments of paragraph 20.

21. Admit that the 1855 Treaty provided for allotments to individual members of the Saginaw Chippewa Indian Tribe, except without knowledge sufficient to form a belief as to the truth of the averments in the rest of paragraph 21.

22. Admit that the areas withdrawn from sale from the public domain were roughly as averred, except deny the remaining averments of paragraph 22 and without knowledge or information sufficient to form a belief as to the area from which the selections could be made.

23. Admit that Saginaw Chippewa Indian Tribe ceded the last of its aboriginal right to land in Michigan by the Treaty with the Chippewas, 7 Stat. 503 (May 9, 1836) ("1836 Saginaw Treaty"), agreed to remove to west of the Mississippi, and that the 1855 Saginaw Treaty allowed individual Saginaw Chippewa Indians to remain in Michigan as citizens of Michigan and to

select allotments pursuant to the Graduation Act, ch. 166, 10 Stat. 574, 33rd Cong., 1st Sess., (Aug. 4, 1854), except deny the remaining averments of paragraph 23.

24. Admit that Article 1 of the 1855 Saginaw Treaty roughly provided for selection of allotments by individual Saginaw Chippewa Indians, except deny the rest of the averments of paragraph 24 and without knowledge or information sufficient to form a belief as to the area from which the selections could be made.

25. Without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 25.

26. Admit that by 1864 individual Saginaw Chippewa Indians initiated discussions on a new treaty, except without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 26.

27. Without knowledge or information sufficient to form a belief as to the truth of averments of paragraph 27.

28. Admit.

29. Admit that article one of the Treaty with the Chippewas, 14 Stat. 657 (October 18, 1864) ("1864 Saginaw Treaty") roughly states as averred, except deny that the alleged "historical Isabella reservation" or alleged "reservation at Saginaw Bay" was of unceded territory to which the Saginaw Chippewa Indian Tribe retained their aboriginal rights.

30. Admit that article two of the 1864 Saginaw Treaty roughly states as averred, except deny that the alleged "historical Isabella reservation" was of unceded territory to which the Saginaw Chippewa Indian Tribe retained any aboriginal rights.

31. Deny.

32. Without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 32.

33. Admit.

34. Admit, except deny that the alleged "historic Isabella Reservation" or "Saginaw Bay reservation" were unceded territory to which the Saginaw Chippewa Indian Tribe retained any aboriginal rights and without knowledge or information sufficient to form a belief as to the total area of the selections.

35. Deny as to the 1855 Saginaw Treaty, and admit as to the 1864 Saginaw Treaty, except deny that the alleged "historical Isabella reservation" was of unceded territory to which the Saginaw Chippewa Indian Tribe retained any aboriginal rights.

36. Deny that the alleged "historic Isabella Reservation" was of unceded territory to which the Saginaw Chippewa Indian Tribe retained any aboriginal rights, except without knowledge of information sufficient to form a belief as to the truth of the averments of paragraph 36.

37. Deny that the alleged "historic Isabella Reservation" was of unceded territory to which the Saginaw Chippewa Indian Tribe retained any aboriginal rights, except admit the remaining averments of paragraph 37.

38. Without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 38.

VII. LEGAL CLAIMS

39. Deny, except admit that individual Saginaw Indians could make selections of land on the alleged "historic Isabella Reservation."

40. Deny.

41. Deny

42. Deny except admit that land owned in trust by the United States for the Saginaw Chippewa Indian Tribe of Michigan is Indian country as that term is used in 18 USC 1151 and United States Supreme Court decisions.

43. Deny

VIII. PRAYER FOR RELIEF

44-46. Deny

AFFIRMATIVE DEFENSES

1. Defendants incorporate the answers to the averments of the complaint in paragraphs 1-46 above.

2. The predecessors of the Saginaw Chippewa Indian Tribe ceded all of their aboriginal rights to land in Michigan through a series of treaties culminating in the 1836 Saginaw Treaty. The 1855 Saginaw Treaty and the 1864 Treaty did not, therefore, reserve any aboriginal rights for the Saginaw Chippewas but merely provide a designated area from which they could choose land like any other individual citizen of Michigan and the United States pursuant to United States law.

3. The Saginaw Chippewa Indian Tribe was dissolved pursuant to the 1855 Saginaw Treaty. Congress also recognized that the Saginaw Chippewa Indian Tribe had been dissolved and jurisdiction over and care of individual Saginaw Chippewas had been committed to the State of Michigan in 1934.

4. The Saginaw Chippewa Indian Tribe has waited over 100 years to raise its claims that the five townships and two half-townships are Indian country. The citizens of Michigan and the state of Michigan have relied on this failure in transacting business, buying property, and

conducting civil and criminal proceedings. The defense of laches, therefore, prevents the Saginaw Chippewa Indian Tribe from asserting its claims.

5. The Saginaw Chippewa Indian Tribe's alleged "historic Isabella Reservation" has been diminished or disestablished by the selection of lands by individual Saginaw Chippewa Indian Tribe members as citizens of the State of Michigan. Michigan has exercised jurisdiction over the alleged "historic Isabella Reservation" for many years without dispute. The vast majority of people within the alleged "historic Isabella Reservation" are not members of the Saginaw Chippewa Indian Tribe of Michigan.

6. The Saginaw Chippewa Indian Tribe seeks relief under 42 USC 1983 that provides for the award of attorneys fees. The Saginaw Chippewa Indian Tribe is not a "person" within the meaning of 42 USC 1983, Tribal rights are not civil rights, and the State of Michigan has not waived its sovereign immunity, including any immunity under the Eleventh Amendment of the United States Constitution, to any form of monetary damages or award.

7. Emissions, discharges, and other releases to the air, water, and environment of Michigan impact the environment and affect the other residents of Michigan outside of the alleged "historic Isabella Reservation." The State of Michigan has, therefore, authority within the alleged "historic Isabella Reservation" to apply its state laws that protect the public health, safety, and welfare as well as the environment.

8. Activities of the Saginaw Chippewa Indian Tribe, tribal members, and non-members within the alleged "historic Isabella Reservation" significantly impact the public health, safety and welfare of the State of Michigan. For example, many people travel by roads maintained by non-Tribal governments on land owned in fee simple by non-Tribal members that units of state government patrol and protect. Units of state government also provide police

protection, fire services, educational, and many other public services to all residents of the alleged "historic Isabella Reservation." The State of Michigan has, therefore, authority within the alleged "historic Isabella Reservation" to apply its state laws that protect the public health, safety, and welfare.

9. The Saginaw Chippewa Indian Tribe has failed to state a claim for relief sought.

10. *Res judicata* or *collateral estoppel* bars this entire litigation or some of the issues raised in the complaint based on the decisions of the United States Indian Claims Commission.

WHEREFORE, Defendants respectfully request that this Court:

- A. Dismiss the Amended Complaint with prejudice,
- B. Declare that the State of Michigan has jurisdiction over all land and people within the alleged "historic Isabella Reservation" except for Saginaw Chippewa Indian Tribal members acting on land held in trust by the United States for the Saginaw Chippewa Indian Tribe.
- C. Declare that the State of Michigan has jurisdiction over all land and people within the alleged "historic Isabella Reservation," including activities on land held in trust by the United States for the Saginaw Chippewa Indian Tribe, where that activity significantly affects the health, safety, and welfare of the citizens of Michigan off of trust land,
- D. Declare that the Saginaw Chippewa Indian Tribe must collect taxes on sales to non-members and members in accordance with law, and
- E. Award Defendants' costs and attorneys' fees so wrongfully incurred.

Respectfully submitted,

Michael A. Cox
Attorney General

/s/ Todd B. Adams
Todd B. Adams (P36819)
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Dated: March 24, 2006

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PROOF OF SERVICE

On the date below, I directed my secretary, Robbin S. Clickner, to electronically file the following document with the Clerk of the Court, U.S. District Court, Eastern District, using the ECF system, which will send notification of such filing to all counsel of record.

Defendants' Answer to Amended Complaint for Declaratory and Injunctive Relief

March 24, 2006

/s/ Todd B. Adams
Todd B. Adams