

Little Traverse Bay Bands of Odawa Indians  
Tribal Court

**Timothy LaCroix, *et al.***  
**Michigan, et al**

Plaintiff

**Rick Snyder, Governor of**

Defendant

**PETITION TO APPEAL**

**APPELLANT'S CLAIM OF APPEAL**

**ORAL ARGUMENT REQUESTED**

**TABLE OF CONTENTS**

Index of Authorities.....3-4

Statement of Jurisdiction.....4

Questions Presented.....4-5

Legal Issues Summary.....6

Procedural & Factual History.....6

Question I.....6-7

Question II.....7

Question III.....7-8

Question IV.....9

Question V.....10

Question VI .....10-11

Conclusion.....12

Prayer for Relief.....12

## **INDEX OF AUTHORITIES**

### **Statutes:**

Little Traverse Bay Bands of Odawa Indians Waganakising Odawak Tribal Code of Law  
Article IV(B).

Little Traverse Bay Bands of Odawa Indians Waganakising Odawa Tribal Code of Law  
4.603(B), and 4.604(B)

Natural Resources and Environmental Protection Act (Excerpt) Act 451 of 1994  
subsection 324.32703, 324.32708a7(b), 324.32723(6)(a)-(d)

Michigan Environmental Protection Act (MCL 324.1701(1))

### **Agreements**

The Great Lakes-St. Lawrence River Basin Water Resources Agreement signed by the  
State of Michigan on December 13, 2005

### **Accord**

Intergovernmental Accord Between The Federally Recognized Tribes in Michigan and  
the Governor of the State of Michigan Concerning Protection of Shared Water  
Resources

**Constitutional Provisions:**

Little Traverse Bay Bands of Odawa Indians Tribal Constitution Article I(A); Article II(1), (8); Article VI(E); Article VII(D), (E); and Article XIX

**STATEMENT OF JURISDICTION**

The Court of Appeals has jurisdiction under WOTCL - Article IX (C)5 & 6.

Little Traverse Bay Bands of Odawa Indians Tribal Constitution Article I(A); Article II(1), (8); Article VI(E); Article VII(D), (E); and Article XIX

Little Traverse Bay Bands of Odawa Indians Tribal Code Title I, Chapter 1

Michigan Environmental Protection Act (MCL 324.1701(1))

Little Traverse Bay Bands of Odawa Indians Tribal Court Chapter 3 – Rules of Civil Procedure

United States Constitution

**QUESTIONS PRESENTED**

1. Does LTBBRCP, R. XVI. mandate that a case be dismissed if the Lower Court determines that it lacks subject matter jurisdiction?
  - a. Appellant says: No.
  - b. Lower Court says: Yes
2. Does the WOTC authorize only the Tribe to bring suit to enjoin parties from engaging in activities that violate Tribal, and other, law?

a. Appellant says: No.

b. Lower Court says: Yes

3. Does the WOTC authorize only LTBB officers, and other tribal, state, or federal law enforcement agencies to bring suit to enforce the LTBB Natural Resources Protection Code?

a. Appellant says: No.

b. Lower Court says: Yes

4. Does Michigan law authorize only the Attorney General of Michigan to enforce the Michigan Natural Resources and Environmental protection Act?

a. Appellant says: No.

b. Lower Court says: Yes

5. Does Section 600(4) of the Great Lakes – St. Lawrence River Basin Sustainable Water Resources Agreement of 2005 authorize only parties to the Agreement to seek enforcement of the Agreement?

a. Appellant says: No.

b. Lower Court says: Yes

6. Is the Intergovernmental Water Accord of 2004 merely a “pledge” that does not create a private right of action to enforce provisions of the “pledge”?

a. Appellant says: No.

b. Lower Court says: Yes

### **LEGAL ISSUES SUMMARY**

Appellants present six legal arguments related to the Lower Court's dismissal of the Appellants' action due to its determination that the Lower Court "lacked subject matter jurisdiction," and, therefore, the Appellants "cannot maintain a private right of action against the Respondents." The Appellate Court would have to rule in favor of Lower Court on all six arguments, presented above, in order to hold that the Dismissal was valid and proper.

### **PROCEDURAL & FACTUAL HISTORY**

On September 23, 2014, at 3:10 pm, Appellant filed a Motion for Immediate Injunctive Relief (along with Exhibits) with the Little Traverse Bay Bands of Odawa Indians, Tribal Court. Court Number C-200-0914 was assigned.

On October 2, 2014, Little Traverse Bay Bands of Odawa Indians Tribal Court Chief Judge Allie Greenleaf Maldonado issued an Order of Dismissal for Lack of Subject Matter Jurisdiction.

QUESTION 1. Does LTBBRCP, R. XVI. mandate that a case be dismissed if the Lower Court determines that it lacks subject matter jurisdiction?

LTBBRCP, R. XVI. states quite clearly that "(b) A party against whom a claim has been made may move the Court to dismiss the claim of the adverse party upon any of

the following grounds: (1) lack of jurisdiction over the subject matter; or (2) lack of jurisdiction over the person;” Consequently, Appellants asks the LTBB Appellate Court to rule that the action of the Lower Court to dismiss the case due to a lack of subject matter jurisdiction is clearly in error, as the Section of the Rules of Civil Procedure, cited by the Lower Court, clearly states that an “order of dismissal” must be in response to a “motion for dismissal” made by the “party against whom the claim has been made.” Clearly, no such Motion by the Defendants/Respondents has been filed.

QUESTION 2. Does the WOTC authorize only the Tribe to bring suit to enjoin parties from engaging in activities that violate Tribal, and other, law?

The “plain and explicit language” of the Code cited by the Lower Court states that the “LTBB will take any appropriate and necessary action to prevent such activity including seeking Federal prosecution therefore,” but that language *does not* bar “individual Tribal Citizens or Tribal corporations to bring suit to enjoin parties from engaging in ‘drilling’ or ‘diversion’ activities” that violate Tribal, State, and/or Federal law, as claimed by the Lower Court, especially in the face of the apparent and obvious refusal of the LTBB to “take any appropriate and necessary action to prevent such activity.” Indeed, it is just such a *lack of action* on the part of the Tribe that prompted Petitioners/Appellants to file their private right of action in the first place.

QUESTION 3. Does the WOTC authorize only LTBB officers, and other tribal, state, or federal law enforcement agencies to bring suit to enforce the LTBB Natural Resources Protection Code?

The “plain and explicit language” of the Code cited by the Lower Court states that: “Officers and other tribal, state and federal law enforcement agencies or personnel as authorized through Tribal Council approved deputization agreements, memoranda of understanding, court order, or compacts are authorized to enforce provisions of this and other LTBB natural resource statutes, laws or regulations,” but that language *does not* bar “individual Tribal Citizens or Tribal corporations to bring suit to enjoin parties from engaging in ‘drilling’ or ‘diversion’ activities” that violate Tribal, State, and/or Federal law, as claimed by the Lower Court, especially in the face of the apparent and obvious refusal of the “authorized” named LTBB officials to “enforce provisions of this and other LTBB natural resource statutes.” Indeed, it is just such a *lack of action* on the part of the Tribe that prompted Petitioners/Appellants to file their private right of action in the first place.

Furthermore, Appellants also claim that such a bar to action would be contrary to Tribal Membership rights and privileges under the Tribal Constitution, wherein it states, in Article II -- Individual Rights: “The Little Traverse Bay Bands of Odawa Indians, in exercising powers of self-governance, shall NOT:... (1.) enforce any law prohibiting ... the right of the people peaceably ... to petition for redress of grievances;”, and (8.) “Deny to any person within its jurisdiction the equal protection of its laws.” Article XIX -- Rights of the Tribe and Its Members-- of the Tribal Constitution also states that: “Nothing in this Constitution shall be construed as restricting any Treaty Rights or any other rights of the Little Traverse Bay Bands of Odawa Indians and its members.” By ruling that only the Tribal Government has authority to act on violation of Tribal Statutes --especially with concerns of health and wellbeing of its Tribal members and Members’

Treaty Rights and Agreements placed at risk by such a ruling, the Lower Court is clearly violating the Tribal Constitution, as such a ruling clearly abrogates the individual rights of its citizens their private right of action as delineated in its Constitution.

QUESTION 4. Does Michigan law authorize only the Attorney General of Michigan to enforce the Michigan Natural Resources and Environmental protection Act?

The Lower Court cites MCL 324.32713, which states: “(1) The department may request the attorney general to commence a civil action for appropriate relief, including a permanent or temporary injunction for a violation of this part or a rule promulgated under this part” (emphasis added). This “may request” clause quite obviously does not “authorize only the Attorney General” to bring suit, as claimed by the Lower Court. In response, the Appellants cite the more expansive and controlling MCL 324.1701, wherein it is stated: “(1) The attorney general **or any person** may maintain an action in the circuit court having jurisdiction where the alleged violation occurred or is likely to occur for declaratory and equitable relief against any person for the protection of the air, water, and other natural resources and the public trust in these resources from pollution, impairment, or destruction” (emphasis added).

While it is true that MCL 1701(1) refers to “the circuit court having jurisdiction,” it must be assumed that due to the simple fact that the Lower Court cited MCL 324.32713, which also refers to the “circuit court,” it should be assumed that the Lower Court is making the exact same jurisdictional claim that the Appellants are making with its reference to MCL 324.1701(1). Consequently, the Appellants’ claim that their private right of action under the authority of the “any person” clause is controlling.

QUESTION 5. Does Section 600(4) of the Great Lakes – St. Lawrence River Basin sustainable Water Resources Agreement of 2005 authorize only parties to the Agreement to seek enforcement of the Agreement?

While it is true that 600(4) restricts “dispute resolution” authority only to “the parties” to the Agreement, Article 702 of the Agreement refers directly to the authority of Tribes under the Agreement, to wit: “Article 702 – Relationship to First Nations and Tribes. (1.) Nothing in this Agreement is intended to abrogate or derogate from treaty rights or rights held by any Tribe recognized by the federal government of the United States based upon its status as a Tribe recognized by the federal government of the United States.” Consequently, the section of the Agreement cited by the Lower Court has no effect on the rights of Tribes and Tribal members to bring a private right of action when it is claimed that Tribal law or Treaty Rights are being violated, as Appellants so claim.

QUESTION 6. Is the Intergovernmental Water Accord of 2004 merely a “pledge” that does not create a private right of action to enforce provisions of the “pledge”?

Although the Lower Court refers to the Intergovernmental Water Accord of 2004 as merely a “pledge,” due to the simple fact that it is an “*Intergovernmental Accord*,” a person of reasonable intelligence could argue that it should be considered as having the force of Treaty, given that Treaties are, under any definition, “intergovernmental accords.” Furthermore, Appellants argue that, under the US Constitution, the Lower Court clearly erred in declaring that the “intergovernmental pledge” did not create a “private right of action” given that Treaties are the referred to in the US Constitution as

the “Supreme Law of the Land” (Article 6, Clause 2). This Article of the US Constitution goes on to state: “and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

According to the LTBB Constitution, the Tribe cannot take away Appellants’ individual private rights of action to sue based on a legally questionable ruling that only the Tribal government can sue for violation of a “pledge,” agreement, promise, treaty or accord. Because our clean water and air do have value, the Intergovernmental Water Accord should be construed as an agreement between all of the sovereign signatories, and, as such, allegations that violations of the rights of the parties as expressed in that “Accord/Treaty” have occurred must be adjudicated in court, not “merely” dismissed by the Lower Court on the spurious grounds that it “lacks subject matter jurisdiction.” By its own accounting, as evidenced by the arguments delineated by the Lower Court in its Dismissal Order, there are a number of genuine disputes as to material fact that argue against a Dismissal and that require adjudication by the Court.

### **CONCLUSION**

The Appellate Court must reverse the clear error of the Lower Court claiming it “lacked subject matter jurisdiction,” given that the Appellants have presented six clear and convincing legal arguments that they do indeed have a “private right to action” under provisions of the Tribal Constitution, the US Constitution, Tribal Code, State of Michigan law, and Intergovernmental Accords and Agreements.

**PRAYER FOR RELIEF**

WHEREFORE, Appellants pray that the Appellate Court reverses the Lower Court decision, and enters an order that:

1.) the Lower Court issue the Injunction against the Respondents sought by the Appellants/ Petitioners, and provide Notice of same to the Respondents, as provided by LTBBRCP Section IX (a), (e), and (f)(1), (2), & (4).

2.) additionally, the Appellants/Petitioners allow that the Appellate Court may “seek Federal prosecution” and enforcement of the Injunction sought by the Appellants/Petitioners, a decision which is available to it under provisions of the Tribal Code, 4.604 (B).

Respectfully submitted

Dated

Proof of Service