

Little Traverse Bay Bands of Odawa Indians
Tribal Court

Court Number C-260-0914

Phil Bellfy: Director of Article32.org;
Article32.org;
Tim LaCroix: Little Traverse Bay Bands Tribal Member,
PLAINTIFFS,

v.

Rick Snyder: Michigan Governor;
Dan Wyant: MI DEQ Director;
Harold R. Fitch: MI DEQ Oil, Gas, and Minerals Chief;
Rick Henderson: MI DEQ Field Operations Supervisor;
Jill Van Dyke: MI DEQ Senior Geologist, Water Resources Division;
Andrew LeBaron: MI DEQ Environmental Quality Analyst;
Mario Fusco: MI DEQ Environmental Engineer,
DEFENDANTS.

MOTION FOR IMMEDIATE INJUNCTIVE RELIEF

Come now Plaintiffs Article32.org, Phil Bellfy, and Tim LaCroix, pursuant to LTBBRCP, Rule IX, and move this honorable court for emergency injunctive relief and in support would state as follows:

I. PARTIES, JURISDICTION, VENUE

Bezhik (1). This court has jurisdiction of this action under Waganakising Odawak Tribal Code (WOTCL) 4.1104.

Niizh (2). Venue is proper in this court, as this matter arises in territory that falls under WOTCL Article IV.B.4. and is in violation of WOTCL 4.603.B. And 4.604.B. (Exhibit A).

Nswi (3). Plaintiff Article32.org is an advocacy group incorporated in the Little Traverse Bay Bands ("LTBB") of Odawa Indians Department of Commerce; Plaintiffs Bellfy and LaCroix are members of the Board of Directors of Article32.org. Tim LaCroix is a Tribal Member of LTBB.

Niiwin (4). Defendants are State of Michigan officials who are responsible for the issuance of "water withdrawal" permits, which results in the diversion of Great Lakes water. They are sued in their official capacity.

II. FACTUAL BACKGROUND

Naanan (5). The diversion of fresh water for deep horizontal hydraulic fracturing for oil and gas production ("fracking"), or for any other reason, is prohibited by WOTCL 4.604; see Exhibit A).

Ngodwaaswi (6). The diversion of fresh water for "fracking," or for any other reason, is also prohibited by the laws of the State of Michigan MCL 324.32703, and 324.32708a (see Exhibit B).

Niizhwaaswi (7). Article 200.1 of the Great Lakes—St. Lawrence River Basin Water Resources Agreement, signed by the State of Michigan, prohibits "New or Increased Diversions" (see Exhibit C)

Nshwaaswi (8). Neither the LTBB Code, nor the State of Michigan's law contains any provisions for exemptions to the prohibition of "water withdrawal, diversion, or consumptive use."

Zhaangswi (9). The State of Michigan and the federally-recognized tribes of Michigan have signed the Intergovernmental Water Accord of 2004 that requires the Parties to establish a process to effectuate the "coordination of permitting activities, and cooperation on enforcement of water protection law" (Exhibit D).

III. BASIS FOR EMERGENCY RELIEF

Mdaaswi (10). The issue is ripe for immediate and emergency disposition.

Mdaaswi-shaa-bezhik (11). Each well that is "fracked" withdraws, diverts, and/or consumes from 5 to 30 millions of gallons of fresh water.

Mdaaswi-shaa-niizh (12). Without an injunction, Defendants are poised to immediately issue fresh-water withdrawal permits for the "fracking" of the "State Excelsior 5-12-HD1" well (Permit # 60767), located within the area of jurisdiction of the LTBB, causing irreparable harm to the resource in violation of Tribal Code, State Law, and the Intergovernmental Water Accord of 2004.

III. IMMEDIATE INJUNCTIVE RELIEF IS APPROPRIATE

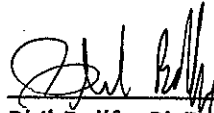
Mdaaswi-shaa-nswi (13). Pursuant to LTBBRCP, Rule IX, f. (1)(2)(3), Plaintiffs are entitled to the relief demanded due to the fact that the issuance of fresh-water withdrawal permits by the Defendants would result in irreparable harm to the resource, and that such

action would be in violation of Tribal Law, State Law, International Agreements, Intergovernmental (Tribal/State) Agreements, and the 1836 Treaty of Washington Article XIII rights of the Plaintiffs.

WHEREFORE, Plaintiffs respectfully request this honorable court to enter an injunction directing Defendants to immediately cease and desist from the issuance of any permits for fresh-water withdrawals (diversion) that will result in that fresh water being used in the deep horizontal hydraulic fracturing process in the State of Michigan.

Plaintiffs further seek all such other relief as this Court may deem just and appropriate.

Respectfully submitted on September 23, 2014, by



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[others]

EXHIBIT A

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS WAGANAKISING ODAWAK TRIBAL CODE of LAW

ARTICLE IV. TERRITORY, JURISDICTION, LANGUAGE, & SERVICE AREA

B. Jurisdiction -- The jurisdiction of the Little Traverse Bay Bands of Odawa Indians shall extend to all territory set forth in Section (A) of this Article and to any and all persons or activities therein based upon the inherent sovereign authority of the Little Traverse Bay Bands of Odawa Indians and Federal law. **The jurisdiction includes but is not limited to air, water, surface, subsurface, natural and cultural resources, and any interests therein.** Jurisdiction over members of the Little Traverse Bay Bands of Odawa Indians shall extend beyond the territory set out in Section (A) whenever they are acting pursuant to, or jurisdiction is created or affirmed by, either:

1. Rights reserved or created by treaty,
2. Little Traverse Bay Bands of Odawa Indians statute, ordinance, resolution, or other authorization,
3. Federal statute, regulation or other authorization pertaining to the Tribe or its members, or
4. Any compact, contract or other agreement entered into pursuant to applicable law pertaining to the Little Traverse Bay Bands of Odawa Indians or its members.
4. Any compact, contract or other agreement entered into pursuant to applicable law pertaining to the Little Traverse Bay Bands of Odawa Indians or its members.

4.603 DRILLING, SALE, AND DIVERSION PROHIBITION

B. No person under the jurisdiction of LTBB may commence or carry out any activities to sell or divert any waters from the Great Lakes.

4.604 VIOLATIONS OF FEDERAL LAW BASED ON TREATIES

A. Under Article VI of the United States Constitution, "all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." LTBB was a party to numerous treaties with the United States including the 1836 Treaty of Washington, 7 Stat. 491, in which the Tribe reserved the right to utilize Great Lakes resources for subsistence and commercial purposes. Federal Courts have upheld the continued vitality of this Treaty right. Degradation and destruction of the Great Lakes ecosystem constitutes an unauthorized limitation or negation of this Treaty right. Any such degradation or destruction therefore violates the "supreme law of the land."

B. Any drilling, sale or diversion which has the potential for impacting the waters of Lakes Michigan, Superior or Huron ceded by the 1836 Treaty of Washington would violate Federal

law and Tribal law, and LTBB will take any appropriate and necessary action to prevent such activity including seeking Federal prosecution therefore.

EXHIBIT B

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT) Act 451 of 1994

324.32703. Subject to section 32704, a **diversion of the waters of the state out of the Great Lakes basin is prohibited.** ["Sec. 32704. Section 32703 does not apply to a diversion of the waters of the Great Lakes out of the drainage basin of the Great Lakes existing on September 30, 1985."]

324.32708a Generic water conservation measures; preparation; posting on website; submission of water conservation measures by water user's sector; acceptance by department; water conservation measures for agricultural purposes; report; notification of zone C withdrawal; definitions.

7(b) "Water conservation measures" means environmentally sound and economically feasible water conservation measures.

324.32723 Water withdrawal permit; persons required to obtain; application; fee; issuance; conditions; revocation; petition for contested case hearing; exemptions from permit requirements.

(6) The department shall issue a water withdrawal permit under subsection (1)(a), (b), or (c) if all of the following conditions are met:

(a) All water withdrawn, less any consumptive use, is returned, either naturally or after use, to the source watershed.

(b) The withdrawal will be implemented so as to ensure that the proposal will result in no individual or cumulative adverse resource impacts. Cumulative adverse resource impacts under this subdivision shall be evaluated by the department based upon available information gathered by the department.

(c) Subject to section 32726, the withdrawal will be implemented so as to ensure that it is in compliance with all applicable local, state, and federal laws as well as all legally binding regional interstate and international agreements, including the boundary waters treaty of 1909.

(d) The proposed use is reasonable under common law principles of water law in Michigan.

EXHIBIT C

The Great Lakes—St. Lawrence River Basin Water Resources Agreement, signed by the State of Michigan (and all Great lakes States and Provinces), on December 13, 2005, defines “Diversion” as “a transfer of Water from the Basin into another watershed.”

Furthermore, the Agreement defines “Cumulative Impacts” as an “impact on the Basin Ecosystem that results from incremental effects of all aspects of a Withdrawal, Diversion or Consumptive Use in addition to other past, present, and reasonably foreseeable future Withdrawals, Diversions and Consumptive Uses regardless of who undertakes the other Withdrawals, Diversions and Consumptive Uses. Cumulative Impacts can result from individually minor but collectively significant Withdrawals, Diversions and Consumptive Uses taking place over a period of time.”

CHAPTER 2 --PROHIBITION OF DIVERSIONS, EXCEPTIONS AND MANAGEMENT AND REGULATION OF WITHDRAWALS (from the The Great Lakes—St. Lawrence River Basin Water Resources Agreement)

ARTICLE 200 -- PROHIBITION OF DIVERSIONS AND MANAGEMENT AND REGULATION OF WITHDRAWALS

1. The Parties shall adopt and implement Measures to prohibit New or Increased Diversions, except as provided for in this Agreement.
2. The Parties shall adopt and implement Measures to manage and regulate Exceptions in accordance with this Agreement.
3. The Parties shall adopt and implement Measures to manage and regulate Withdrawals and Consumptive Uses in accordance with this Agreement.

ARTICLE 201 -- EXCEPTIONS TO THE PROHIBITION OF DIVERSIONS -- Exception Standard

4. The following criteria constitute the Exception Standard:
 - a. The need for all or part of the Exception cannot be reasonably avoided through the efficient use and conservation of existing water supplies;
 - b. The Exception shall be limited to quantities that are considered reasonable for the purposes for which it is proposed;
 - c. All Water Withdrawn shall be returned, either naturally or after use, to the Source Watershed less an allowance for Consumptive Use. No surface water or groundwater from outside the Basin may be used to satisfy any portion of this criterion except if it:
 - i. Is part of a water supply or wastewater treatment system that combines water from inside and outside of the Basin;
 - ii. Is treated to meet applicable water quality discharge standards and to prevent the introduction of invasive species into the Basin;
 - d. The Exception shall be implemented so as to ensure that it shall result in no significant individual or cumulative adverse impacts to the quantity or quality of the Waters and Water Dependent Natural Resources of the Basin with consideration given to the potential Cumulative Impacts of any precedent-setting consequences associated with the Proposal;
 - e. The Exception shall be implemented so as to incorporate Environmentally Sound and

Economically Feasible Water Conservation Measures to minimize Water Withdrawals or Consumptive Use;

f. The Exception shall be implemented so as to ensure that it is in compliance with all applicable municipal, State, Provincial and federal laws as well as regional interstate, inter-provincial and international agreements, including the Boundary Waters Treaty of 1909;

g. All applicable criteria in this Article have also been met.

GREAT LAKES—ST. LAWRENCE RIVER BASIN WATER RESOURCES COMPACT

Section 1. The states of Illinois, Indiana, Michigan, Minnesota, New York, Ohio and Wisconsin and the Commonwealth of Pennsylvania hereby solemnly covenant and agree with each other, upon enactment of concurrent legislation by the respective state legislatures and consent by the Congress of the United States as follows (signed December 8, 2008):

ARTICLE 1 - SHORT TITLE, DEFINITIONS, PURPOSES AND DURATION

Section 1.1. Short Title. This act shall be known and may be cited as the "Great Lakes—St. Lawrence River Basin Water Resources Compact."

Section 1.2. Definitions. For the purposes of this Compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

Consumptive Use means that portion of the Water Withdrawn or withheld from the Basin that is lost or otherwise not returned to the Basin due to evaporation, incorporation into Products, or other processes.

Cumulative Impacts mean the impact on the Basin Ecosystem that results from incremental effects of all aspects of a Withdrawal, Diversion or Consumptive Use in addition to other past, present, and reasonably foreseeable future Withdrawals, Diversions and Consumptive Uses regardless of who undertakes the other Withdrawals, Diversions and Consumptive Uses. Cumulative Impacts can result from individually minor but collectively significant Withdrawals, Diversions and Consumptive Uses taking place over a period of time.

Diversion means a transfer of Water from the Basin into another watershed, or from the watershed of one of the Great Lakes into that of another by any means of transfer, including but not limited to a pipeline, canal, tunnel, aqueduct, channel, modification of the direction of a water course, a tanker ship, tanker truck or rail tanker but does not apply to Water that is used in the Basin or a Great Lake watershed to manufacture or produce a Product that is then transferred out of the Basin or watershed. Divert has a corresponding meaning."

Water means ground or surface water contained within the Basin.

Water Dependent Natural Resources means the interacting components of land, Water and living organisms affected by the Waters of the Basin.

Waters of the Basin or Basin Water means the Great Lakes and all streams, rivers, lakes, connecting channels and other bodies of water, including tributary groundwater, within the Basin.

Withdrawal means the taking of water from surface water or groundwater. Withdraw has a corresponding meaning.

EXHIBIT D

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

Entered into on May 12, 2004, Lansing, Michigan

Whereas the federally recognized Indian Tribes in Michigan and the Governor of the state of Michigan each recognize the essential role of the Great Lakes and of Michigan's inland lakes, rivers, streams, and groundwater (hereinafter termed "water resources") in their past, their present, and their shared destiny;

Whereas the Tribes historically resided in the Great Lakes Region in harmony with the natural environment since well before the arrival of Europeans and have depended upon the water resources of the Great Lakes Region for food, water, and transportation for hundreds of years;

Whereas the Great Lakes and Michigan's inland lakes, rivers, streams, and groundwater remain the cornerstone of the culture and the physical and spiritual well-being of the Tribes and preserving the environmental quality and quantity of those water resources for the present and for the next seven generations is absolutely essential to the Tribes;

Whereas the Great Lakes and inland waters are the state of Michigan's most vital resources and figuratively and literally define the state; the citizens of the state rely on these water resources for their subsistence, health, recreation, and for their aesthetic value; and those water resources also underpin Michigan's economy due to their importance for tourism, agriculture, industry, and transportation;

Whereas the future well-being of all of the residents of the state of Michigan depends on the preservation and enhancement of the quality and quantity of its water resources;

Whereas Michigan's water resources are subject to degradation from numerous sources including toxic substances such as pesticides, mercury and other heavy metals from a variety of agricultural, industrial and municipal sources; and the introduction of exotic species such as lamprey and zebra mussels strain the Great Lakes ecosystem;

Whereas the very presence of the water is imminently threatened by the desire of governments and private companies to divert or export Great Lakes waters outside the Great Lakes basin;

Whereas many activities such as dredging, wetland development, and inadequate wastewater treatment strain the natural recuperative powers of the water resources to maintain diverse ecosystems which depend on water quality and quantity for their very existence;

Whereas past, present and future utilization of water resources by governmental units and private individuals and entities is subject to oversight and regulation under a complex framework of federal, state and tribal law;

Whereas the grandeur and beauty of the Great Lakes create a facade of endless abundance but the Great Lakes and inland waters are in reality delicate and finite;

Whereas protection of these magnificent resources for the present and future generations requires the constant commitment, vigilance, and cooperation of all governments that have jurisdiction over them;

Whereas the undersigned parties wish to enhance and strengthen the government-to-government relationship among the Tribes and between the Tribes and the state of Michigan;

NOW, THEREFORE, the Governor and the undersigned Tribes affirm their joint commitment to the preservation, restoration and enhancement of the Great Lakes ecosystem and pledge to work together to clean-up the pollutants now present, eliminate exotic species, maintain and preserve diverse water resource habitats, and prevent future contaminants, exotics and depletion of these waters. They further commit to sending representatives to meet at least twice a year to review the quantity and quality of our water resources and to develop strategies for protecting those resources including recommendations for state, federal and tribal legislation, and international treaties, **coordination of permitting activities, and cooperation on enforcement of water protection laws.**

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