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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

CLERK OF COURT
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: clp SCANNED BY: clp 8/13

PHILIP C. BELLFY, *pro per*
MONICA CADY, *pro per*
JAMES A. LEBLANC, *pro per*
DIEDRE J. MALLOY, *pro per*
NATHAN J. WRIGHT, *pro per*
and John Does,
and Mary Does,

Case No. 1:15-CV-282

Hon. Paul L. Maloney, Chief Judge

Plaintiffs, *pro se* litigants

v.

KEITH CREAGH,

**EXPEDITED CONSIDERATION
REQUESTED**

Defendant

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PLAINTIFFS' MOTION FOR DECLARATORY JUDGMENT

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RATIONALE FOR EXPEDITED CONSIDERATION

This Motion is simply a restatement of Plaintiffs' request for a Declaratory Judgment that was part of their Response filed with the Court on April 15, 2015 (Docket #11). Apparently, Plaintiffs did not follow the proper procedure for filing a Motion at that time, hence, it is appropriate that the Court grant the Plaintiffs' Request for Expedited Consideration at this time, four months later.

CONCISE STATEMENT OF ISSUES PRESENTED

The actual controversy in this case mirrors the situation prior to the signing of the Inland Consent Decree in 2007. Prior to 2007, the state, and its officers, employees, agencies, subdivisions,

successors, and assigns, simply refused to recognize that American Indians in the 1836 Ceded Territory were in possession of their “usual privileges of occupancy” as affirmed by the 1836 Treaty of Washington.

In its refusal to recognize those Treaty rights prior to 2007, the state simply and unilaterally enforced its own laws against American Indians who were merely exercising their Treaty Rights. In this case, Plaintiffs assert that the state law authorizing the sale of “surplus” land within the boundaries of the 1836 Ceded Territory gives rise to the actual controversy. That is, does state law give the Defendant the authority to unilaterally abrogate the Treaty rights of American Indians within the boundaries of the 1836 Ceded Territory?

CONTROLLING AUTHORITY

The US Constitution states that Treaties are “the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding” (emphasis added). Also, Plaintiffs contend that their Constitutional rights to Due Process and Equal Protection, secured to them by the 14th Amendment, cannot be unilaterally abrogated by Defendant.

STATEMENT OF FACTS

The State of Michigan voluntarily entered into the 2007 Inland Consent Decree which “resolve[s] conclusively such [Article XIII – usual privileges of occupancy] claims, and [provides] for the protection of the resources in the 1836 Ceded Territory.” The Consent Decree is “binding upon the Parties, their officers, employees, agencies, subdivisions, successors, and assigns and shall remain binding notwithstanding any future rulings or determinations in any jurisdiction that may be inconsistent with the provisions of this Decree.”

THE ARGUMENT

The actual controversy in this case can be stated thus: Does the Defendant have a statutory or constitutional right to transfer 1836 Ceded Territory “public land” to Graymont, LLC, for the strip-mining of limestone, which will result in the abrogation of Plaintiffs' rights; rights that are protected under the terms of the “Doctrine of Discovery,” secured to them under the US Constitution; rights that are further protected under the “usual privileges of occupancy” language of Article XIII of the 1836 Treaty of Washington; rights have been fairly, equitably, freely, fully, and conclusively resolved and secured to the Plaintiffs under the procedural and substantive provisions of the 2007 Consent Decree?

The Plaintiffs say no.

The Defendant says yes.

In support of their Motion for Declaratory Judgment (FED. R. CIV. P. 57), Plaintiffs draw the Court's attention to its statement in its dismissal of Plaintiffs' Motion for a TRO, to wit: “The nature of the claim Plaintiffs are attempting to assert pro se appear to touch on both procedural and substantive provisions of the Consent Decree.”

Plaintiffs claim that the actual controversy in this case arises from the inability, or refusal, of the Defendant to recognize that the general laws of the State of Michigan are not applicable to the “public lands” situated within the 1836 Ceded Territory, as those lands are subject to the provisions of the 2007 Inland Consent Decree, which is, in turn, considered constitutionally to be the “Supreme Law of the Land.” Further, and perhaps most importantly, based on their Treaty/Constitutional rights, Plaintiffs contend that American Indians are not merely members of “the public” when they are exercising their “usual privileges of occupancy” with the boundaries of the 1836 Ceded Territory.

The actual controversy in this case, therefore, is whether or not American Indians (members of the “Plaintiffs Class” in this case) possess constitutionally-protected Treaty rights that are capable of

being exercised within the boundaries of the 1836 Ceded Territory without interference from the state, rights that are decidedly and constitutionally distinct from those rights that the general public may have the privilege to exercise on otherwise defined “public lands.”

Also, Plaintiffs state in support of their Motion for a Declaratory Judgment that the very state law cited by the Defendant in support of the state's justification for transferring that portion of the “Ceded Territory” to Graymont Mining actually bars that transfer.

MCL 324.2131 states as follows: “(1) Except as otherwise provided in subsection (2) or (3), the department may designate as surplus land any state owned land that is under the control of the department and that has been dedicated for public use and may, on behalf of the state, sell that land if the department determines all of the following: ... (b) That the sale is not otherwise restricted by law” (emphasis added).

Plaintiffs assert that the 1836 Treaty of Washington is “the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.” *US Constitution, Article VI, Section 2*. Consequently, the sale or transfer of land to Graymont Mining, LLC, is restricted by the “supreme Law of the Land,” that is, restricted by the 1836 Treaty of Washington, and its attendant 2007 Inland Consent Decree, MCL 324.2131 notwithstanding.

Furthermore, Plaintiffs aver that their rights to Due Process and Equal Protection, secured to them by the 14th Amendment to the US Constitution, would also be abrogated by the Defendant's proposed transfer of Ceded Territory to Graymont, LLC, given that the proposed transfer would forever remove 11,000 acres from the public domain. According to the proposed LTA between the State and Graymont, LLC, Tribal members who enter this area of their Ceded Territory in exercise of their Treaty rights would be considered to be “trespassers.”

PRAYER FOR RELIEF

Plaintiffs state in support of this motion:

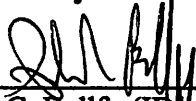
An action has been instituted between Plaintiffs and Defendant, and it is appropriate that a Declaratory Judgment be issued stating that the Defendant's proposed transfer out of the “public domain” of any 1836 Ceded Territory is an unconstitutional violation of Plaintiffs' Treaty rights.

In consideration of the above, Plaintiffs request the court to:

Pursuant to FED. R. CIV. P. 57, and based on the arguments presented in this Motion and in other filings in this case, Plaintiffs pray this honorable Court will be cognizant of the actual controversy in this case, and immediately issue a Declaratory Judgment stating that the approval of any land transactions involving any 1836 Ceded Territory (the boundaries of which are detailed in 2007 Inland Consent Decree) by the Defendant, or any other State of Michigan officer, employee, agency, subdivision, successor, or assign, is an unconstitutional violation of Plaintiffs' rights under Article VI, Section 2, of the US Constitution. Also, Plaintiffs request that the Court consider that the proposed “transfer” of Ceded Territory would, without question, violate Plaintiffs' Equal Protection and Due Process rights secured to them under the 14th Amendment to the Constitution.

Plaintiffs further pray this honorable court will consider that the proposed sale of any portion of the 1836 Ceded Territory is also in violation of the plain language of MCL 324.2131(1)(b) which “restricts by law” the Defendant's action in this case. In this actual controversy, the “law” that Plaintiffs pray this honorable court will refer to in its Declaratory Judgment is the “supreme law of the land,” the 1836 Treaty of Washington (and its attendant 2007 Inland Consent Decree).

Respectfully Submitted, on August 10, 2015

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