

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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

Plaintiffs, *pro se* litigants

v

KEITH CREAGH,

Defendant.

No. 1:15-cv-00282

HON. PAUL L. MALONEY

MAG. ELLEN S. CARMODY

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**THE DIRECTOR OF THE MICHIGAN DEPARTMENT OF NATURAL  
RESOURCES' RESPONSE TO THE PLAINTIFFS' MOTION FOR RELIEF  
FROM JUDGMENT**

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Dated: February 9, 2016

The Plaintiffs' request for relief from the Court's August 28, 2015 judgment is not justified. The reason the Court dismissed the Plaintiffs' case is because the Plaintiffs lacked standing to pursue it. (DOC # 52.) The Court provided the Plaintiffs with ample opportunity to demonstrate standing, which they were unable to do. (DOC #33.) And none of the information in the Plaintiffs' newly filed brief even addresses the Plaintiffs' standing.

Instead of addressing the standing issue, the Plaintiffs' believe that they have obtained "new evidence" showing that the Director "misrepresented" the Graymont transaction to the Court. (DOC #54, PgID #751.) But the Plaintiffs are incorrect. Notwithstanding the Director's thorough explanation of the Graymont transaction on April 14, 2015, (DOC #8, PgID #42-45), and the Court's description of it in its August 28, 2015 order (DOC #52, PgID #740-741), the Plaintiffs misunderstand the transaction.

The Plaintiffs insist that the Director "submitted to this Court" that "approximately 11,700 acres" would be "transferred" to Graymont, but then told the media on September 2, 2015 that only 2,000 acres would be transferred. (DOC #54, PgID #751.) It is true that when Graymont first approached the DNR about purchasing public lands, they proposed purchasing both the subsurface and surface rights to 11,213 acres of land. (DOC #8, PgID #42.) But Graymont's initial proposal triggered an exhaustive review process that caused Graymont to amend its proposal several times. (*Id.* at 43.) The proposal that the DNR ultimately approved would sell only 2,614 acres of subsurface and surface rights to Graymont, while the

remaining 7,026 acres would consist of *only of subsurface* rights. (*Id.* at 44.) So the DNR's statement to a reporter that the "Graymont deal was reduced from roughly 10,000 acres to around 2,000 acres" is simply a description of the Graymont transaction referring to the amount of surface rights Graymont would own. It is not new information. The Director did not misrepresent anything to the Court.

The Plaintiffs also insist that the Director did not accurately explain which portions of the surface rights the DNR would sell to Graymont would remain open to public access. Specifically, the Plaintiffs believe that a February 13, 2015 letter from the Director<sup>1</sup> that includes the phrase "[t]he maximum impact to Tribal treaty rights is 2681 acres" means that the public will not be able to access 2681 acres. (DOC #54, PgID #751.) Again, the Plaintiffs misunderstand. In the same February 13, 2015 letter the Plaintiffs quote from, the Director explained that the public would have "continued access to these properties until development . . . ." This statement is consistent with the Director's explanation to the Court that the public would continue to have access even to the land where Graymont owns the surface rights unless the surface is needed for "mining access and operations." (DOC #8, PgID #44.)

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<sup>1</sup> The Director of the DNR is no longer Keith Creagh, it is Interim Director William Moritz.

## CONCLUSION AND REQUEST FOR RELIEF

The Plaintiffs misunderstand the Graymont transaction notwithstanding the Director's detailed description. So the information the Plaintiffs believe is new is not, in fact, new. And even if the nature of the Graymont transaction had changed since the Court's August 28, 2015 judgment, changes to the transaction would not alter the fact that the Plaintiffs still lack standing. There is simply no basis for granting the Plaintiffs' request under Fed. R. Civ. P. 60(b).

Therefore, the Director requests that the Court deny the Plaintiffs' request to grant it relief from the Court's August 28, 2015 judgment, along with any other relief the Court considers appropriate.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the above document with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record. I have also caused to be mailed by first-class mail the above document to the following non-ECF participants:

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