



June 8, 2021

Matt Brookhart, Regional Director
United States Department of Commerce
NOAA Office of National Marine Sanctuaries
1305 East West Highway
Silver Spring, MD 20910

RE: Sanctuary Nomination in Whitefish Bay

Dear Mr. Brookhart,

On behalf of Gnoozhekaaning, *Place of the Pike*, or Bay Mills Indian Community I thank you for reaching out to discuss the national marine sanctuary nomination in Lake Superior, which includes areas of Whitefish Point and Whitefish Bay. Bay Mills Indian Community does not agree to or consent to this area being nominated as a national marine sanctuary by the National Oceanic and Atmospheric Administration, as Bay Mills Indian Community has a long-standing and critical interest in the waters of the Great Lakes and the surrounding region.

Bay Mills Indian Community is a signatory to the March 28, 1836 Treaty of Washington (7 Stat. 491), in which our Tribal Nation ceded territory to the United States for the creation of the State of Michigan, which included approximately 14 million acres of land and 13 million acres of navigable waters. In exchange, Bay Mills reserved the right to fish, hunt, and gather throughout the territory - including in the Great Lakes and Whitefish Bay. These rights have been confirmed by state and federal courts, and are still exercised in present day. *See People v. LeBlanc*, 399 Mich. 31, 248 N.W. 2d 199 (1976).

Bay Mills is very concerned about a sanctuary nomination in Lake Superior, as the sanctuary nomination is not only within waters that Bay Mills exercises treaty rights, but also resides within our Tribal Nation's reservation. Under the Article Third of the 1836 Treaty of Washington, a reservation was established for the ancestors of the Bay Mills Indian Community, stating

a tract commencing at the mouth of the Pississowining river, south of Point Iroquois, thence running up said stream to its forks, thence westward, in a direct line to the Red water lakes, thence across the portage to the Tacquimenon river, and down the same to its mouth, *including the small islands and fishing grounds, in front of this reservation.*

7 Stat. 491. The United States also filed suit against the State of Michigan in 1973, on its behalf and on behalf of the Bay Mills Indian Community, challenging the application of the State fishing regulations to the Great Lakes fishing activities of Bay Mills Indian Community's tribal citizens. In 1976, the United States filed an amended complaint, in which it claims that the Article Third

reservation in Whitefish Bay continues to exist and that the Bay Mills Indian Community has the right to manage and regulate the activities of those persons on those waters. *See United States v. State of Michigan*, 471 F. Supp. 192 (W.D. Mich. 1979), *aff'd*, 653 F.2d 277 (6th Cir. 1981), *cert. denied*, 454 U.S. 1124 (1981).

Although our ancestors were willing to provide land to the United States, they carefully protected our traditional lifeways and its reliance on the environment's natural resources for food, shelter, medicines, and for trade. Commercial and subsistence fishing continue to be the primary occupation of citizens of the Bay Mills Indian Community from treaty times until the present day. Over half our citizen households rely on fishing for all, or a portion of their annual income. A marine sanctuary in Lake Superior, within the ceded waters of the 1836 Treaty of Washington, is a direct threat to that way of life our ancestors carefully protected to preserve our Tribal Nation's way of life and continued survival.

Federal agencies have an active role in protecting tribal treaty rights and resources. Tribal Nation's treaty rights in this area predate and supersede the interests of any organizations interested in a marine sanctuary. The United States Constitution states that all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the Land. U.S. Const. art. VI. The United States Department of Commerce through NOAA must guarantee that treaty rights remain meaningful and available to Tribal Nations, such as by guaranteeing tribal citizens continued access to waters and lands where they hold rights. If the access or use of those waters in which the treaty right depends on is impeded, prevented, or destroyed - the right is violated.

While we appreciate the interest in shipwrecks and history of vessels lost to the gales of November throughout Lake Superior, given the risks and harms to our tribal citizens, traditional lifeways, and tribal treaty rights – this is a nomination that should be rejected and stopped as quickly as possible. Should you have any questions regarding this letter, please contact the Bay Mills Legal Department at candyt@bmic.net. We have included attachments to the above referenced materials.

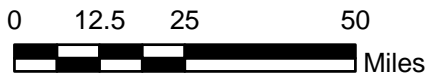
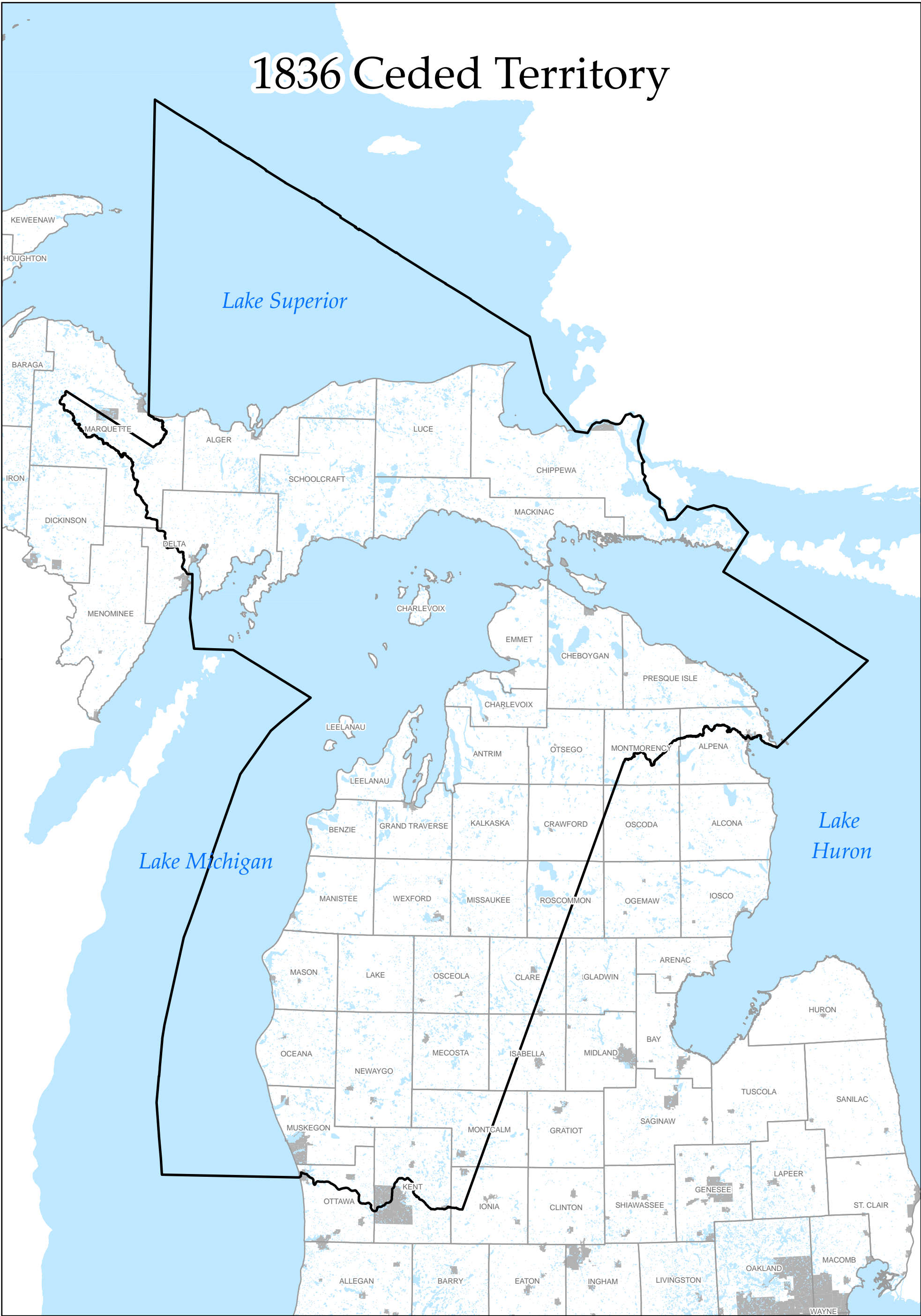
Miigwetch (thank you),



Whitney B. Gravelle, President
Executive Council
Bay Mills Indian Community

CC: Elen Brody, Great Lakes Regional Coordinator
Sandra Clark, Michigan History Center
Martha MacFarlane-Faes, State Historic Preservation Office
Stacy Tchorzynski, State Historic Preservation Office
Sarah Triplett, Governor's Office

1836 Ceded Territory



Data: LTBB NRD, State of Michigan CGI, LTBB GIS, LTBB Legal
Based on 1836 Treaty of Washington, 7 Stat. 491.
February 1, 2010

Legend

1836 Ceded Territory

County Line

City - Village

Lake

TREATY WITH THE POTAWATOMI, 1836.

Mar. 26, 1836.

7 Stat., 490.
Proclamation, June
4, 1836.

Articles of a treaty made and concluded at camp in Turkey Creek Prairie, in the State of Indiana, between Abel C. Pepper commissioner of the United States and Mes-quaw-buck, a chief of the Pottawatamy tribe of Indians and his band, on twenty-sixth day of March, in the year eighteen hundred and thirty-six.

Cession of land to
United States.

ART. 1. The above named chief and his band hereby cede to the United States the four sections of land reserved for them by the second article of the treaty between the United States and the Pottawatamy Indians, on Tippecanoe river on the twenty-seventh day of October 1832.

Payment therefor.

ART. 2. In consideration of the cession aforesaid the United States stipulate to pay the above named chief and his band the sum of twenty-five hundred and sixty dollars in specie at the next payment of annuity after the ratification of this treaty.

Expenses of this
treaty to be paid by
United States.

ART. 3. The United States stipulate to provide for the payment of the necessary expenses attending the making and concluding this treaty.

Indians to remove
within two years.

ART. 4. The above named chief and his band agree to yield peaceable possession of the above sections of land and remove to the country west of the Mississippi provided for the Pottawatamy nation by the United States, within two years from this date.

Treaty binding
when ratified.

ART. 5. This treaty shall be binding upon both parties from the date of its ratification by the President and Senate of the United States.

ART. 6. [Stricken out by Senate.]

In testimony whereof, the said A. C. Pepper, commissioner on the part of the United States, and the above named chief and head men for themselves and their band, hereunto subscribed their names, the day and year above written.

A. C. Pepper,
Mes-quaw-buck, his x mark,
Me-s-Sett, his x mark,
Muck Rose, his x mark,

Waw-baw-que-ke-aw, his x mark,
Naush-waw-pi-tant, his x mark,
Che-quasau-quah, his x mark.

Witnesses:

C. Carter, secretary,
Edward McCartney, interpreter.

TREATY WITH THE OTTAWA, ETC., 1836.

Mar. 28, 1836.

7 Stat., 491.
Proclamation, May
27, 1836.

Articles of a treaty made and concluded at the city of Washington in the District of Columbia, between Henry R. Schoolcraft, commissioner on the part of the United States, and the Ottawa and Chippewa nations of Indians, by their chiefs and delegates.

Cession of land to
the United States.

ARTICLE FIRST. The Ottawa and Chippewa nations of Indians cede to the United States all the tract of country within the following boundaries: Beginning at the mouth of Grand river of Lake Michigan on the north bank thereof, and following up the same to the line called for, in the first article of the treaty of Chicago of the 29th of August 1821, thence, in a direct line, to the head of Thunder-bay river, thence with the line established by the treaty of Saganaw of the 24th of September 1819, to the mouth of said river, thence northeast to the boundary line in Lake Huron between the United States and the British province of Upper Canada, thence northwestwardly, following the said line, as established by the commissioners acting under the treaty of Ghent,

through the straits, and river St. Mary's, to a point in Lake Superior north of the mouth of *Gitchy Seebing*, or Chocolate river, thence south to the mouth of said river and up its channel to the source thereof, thence, in a direct line to the head of the *Skonawba* river of Green bay, thence down the south bank of said river to its mouth, thence, in a direct line, through the ship channel into Green bay, to the outer part thereof, thence south to a point in Lake Michigan west of the north cape, or entrance of Grand river, and thence east to the place of beginning, at the cape aforesaid, comprehending all the lands and islands, within these limits, not hereinafter reserved.

ARTICLE SECOND. From the cession aforesaid the tribes reserve for their own use, to be held in common the following tracts for the term of five years from the date of the ratification of this treaty, and no longer; unless the United States shall grant them permission to remain on said lands for a longer period, namely: One tract of fifty thousand acres to be located on Little Traverse bay: one tract of twenty thousand acres to be located on the north shore of Grand Traverse bay, one tract of seventy thousand acres to be located on, or, north of the *Pieire Marquette* river, one tract of one thousand acres to be located by Chingassanoo,—or the Big Sail, on the Cheboigan. One tract of one thousand acres, to be located by Mujeekewis, on Thunder-bay river.

Reservations in
common.

ARTICLE THIRD. There shall also be reserved for the use of the Chippewas living north of the straits of Michilimackinac, the following tracts for the term of five years from the date of the ratification of this treaty, and no longer, unless the United States shall grant them permission to remain on said lands for a longer period, that is to say: Two tracts of three miles square each, on the north shores of the said straits, between *Point-au-Barbe* and *Mille Coquin* river, including the fishing grounds in front of such reservations, to be located by a council of the chiefs. The Beaver islands of Lake Michigan for the use of the Beaver-island Indians. Round island, opposite Michilimackinac, as a place of encampment for the Indians, to be under the charge of the Indian department. The islands of the *Chenos*, with a part of the adjacent north coast of Lake Huron, corresponding in length, and one mile in depth. Sugar island, with its islets, in the river of St. Mary's. Six hundred and forty acres, at the mission of the Little Rapids. A tract commencing at the mouth of the *Pississowining* river, south of Point Iroquois, thence running up said stream to its forks, thence westward, in a direct line to the Red water lakes, thence across the portage to the Tacquimenon river, and down the same to its mouth, including the small islands and fishing grounds, in front of this reservation. Six hundred and forty acres, on Grand island, and two thousand acres, on the main land south of it. Two sections, on the northern extremity of Green bay, to be located by a council of the chiefs. All the locations, left indefinite by this, and the preceding articles, shall be made by the proper chiefs, under the direction of the President. It is understood that the reservation for a place of fishing and encampment, made under the treaty of St. Mary's of the 16th of June 1820, remains unaffected by this treaty.

Reservations for
Chippewas.

ARTICLE FOURTH. In consideration of the foregoing cessions, the United States engage to pay to the Ottawa and Chippewa nations, the following sums, namely. 1st. An annuity of thirty thousand dollars per annum, in specie, for twenty years; eighteen thousand dollars, to be paid to the Indians between Grand River and the Cheboigan; three thousand six hundred dollars, to the Indians on the Huron shore, between the Cheboigan and Thunder-bay river; and seven thousand four hundred dollars, to the Chippewas north of the straits, as far as the cession extends; the remaining one thousand dollars, to be invested in stock by the Treasury Department and to remain incapable of being

Payments to be
made to the Indians.

sold, without the consent of the President and Senate, which may, however, be given, after the expiration of twenty-one years. 2nd. Five thousand dollars per annum, for the purpose of education, teachers, school-houses, and books in their own language, to be continued twenty years, and as long thereafter as Congress may appropriate for the object. 3rd. Three thousand dollars for missions, subject to the conditions mentioned in the second clause of this article. 4th. Ten thousand dollars for agricultural implements, cattle, mechanics' tools, and such other objects as the President may deem proper. 5th. Three hundred dollars per annum for vaccine matter, medicines, and the services of physicians, to be continued while the Indians remain on their reservations. 6th. Provisions to the amount of two thousand dollars; six thousand five hundred pounds of tobacco; one hundred barrels of salt, and five hundred fish barrels, annually, for twenty years. 7th. One hundred and fifty thousand dollars, in goods and provisions, on the ratification of this treaty, to be delivered at Michilimackinac, and also the sum of two hundred thousand dollars, in consideration of changing the permanent reservations in article two and three to reservations for five years only, to be paid whenever their reservations shall be surrendered, and until that time the interest on said two hundred thousand dollars shall be annually paid to the said Indians.

Payment of claims
against the Indians.

ARTICLE FIFTH. The sum of three hundred thousand dollars shall be paid to said Indians to enable them, with the aid and assistance of their agent, to adjust and pay such debts as they may justly owe, and the overplus, if any, to apply to such other use as they may think proper.

Provision for half-
breeds, etc.

ARTICLE SIXTH. The said Indians being desirous of making provision for their half-breed relatives, and the President having determined, that individual reservations shall not be granted, it is agreed, that in lieu thereof, the sum of one hundred and fifty thousand dollars shall be set apart as a fund for said half-breeds. No person shall be entitled to any part of said fund, unless he is of Indian descent and actually resident within the boundaries described in the first article of this treaty, nor shall any thing be allowed to any such person, who may have received any allowance at any previous Indian treaty. The following principles, shall regulate the distribution. A census shall be taken of all the men, women, and children, coming within this article. As the Indians hold in higher consideration, some of their half-breeds than others, and as there is much difference in their capacity to use and take care of property, and, consequently, in their power to aid their Indian connexions, which furnishes a strong ground for this claim, it is, therefore, agreed, that at the council to be held upon this subject, the commissioner shall call upon the Indian chiefs to designate, if they require it, three classes of these claimants, the first of which, shall receive one-half more than the second, and the second, double the third. Each man woman and child shall be enumerated, and an equal share, in the respective classes, shall be allowed to each. If the father is living with the family, he shall receive the shares of himself, his wife and children. If the father is dead, or separated from the family, and the mother is living with the family, she shall have her own share, and that of the children. If the father and mother are neither living with the family, or if the children are orphans, their share shall be retained till they are twenty-one years of age; provided, that such portions of it as may be necessary may, under the direction of the President, be from time to time applied for their support. All other persons at the age of twenty-one years, shall receive their shares agreeably to the proper class. Out of the said fund of one hundred and fifty thousand dollars, the sum of five thousand dollars shall be reserved to be applied, under the direction of the President, to the support of such of the poor half breeds, as may require

assistance, to be expended in annual instalments for the term of ten years, commencing with the second year. Such of the half-breeds, as may be judged incapable of making a proper use of the money, allowed them by the commissioner, shall receive the same in instalments, as the President may direct.

ARTICLE SEVENTH. In consideration of the cessions above made, and as a further earnest of the disposition felt to do full justice to the Indians, and to further their well being, the United States engage to keep two additional blacksmith-shops, one of which, shall be located on the reservation north of Grand river, and the other at the *Sault Ste. Marie*. A permanent interpreter will be provided at each of these locations. It is stipulated to renew the present dilapidated shop at Michilimackinac, and to maintain a gunsmith, in addition to the present smith's establishment, and to build a dormitory for the Indians visiting the post, and appoint a person to keep it, and supply it with fire-wood. It is also agreed, to support two farmers and assistants, and two mechanics, as the President may designate, to teach and aid the Indians, in agriculture, and in the mechanic arts. The farmers and mechanics, and the dormitory, will be continued for ten years, and as long thereafter, as the President may deem this arrangement useful and necessary; but the benefits of the other stipulations of this article, shall be continued beyond the expiration of the annuities, and it is understood that the whole of this article shall stand in force, and inure to the benefit of the Indians, as long after the expiration of the twenty years as Congress may appropriate for the objects.

Two additional blacksmiths, etc.

ARTICLE EIGHTH. It is agreed; that as soon as the said Indians desire it, a deputation shall be sent to the southwest of the Missouri River, there to select a suitable place for the final settlement of said Indians, which country, so selected and of reasonable extent, the United States will forever guaranty and secure to said Indians. Such improvements as add value to the land, hereby ceded, shall be appraised, and the amount paid to the proper Indian. But such payment shall, in no case, be assigned to, or paid to, a white man. If the church on the Cheboigan, should fall within this cession, the value shall be paid to the band owning it. The net proceeds of the sale of the one hundred and sixty acres of land, upon the Grand River upon which the missionary society have erected their buildings, shall be paid to the said society, in lieu of the value of their said improvements. When the Indians wish it, the United States will remove them, at their expence, provide them a year's subsistence in the country to which they go, and furnish the same articles and equipments to each person as are stipulated to be given to the Pottowatomies in the final treaty of cession concluded at Chicago.

Locations to be sought for; payment for improvements, etc.

ARTICLE NINTH. Whereas the Ottawas and Chippewas, feeling a strong consideration for aid rendered by certain of their half-breeds on Grand river, and other parts of the country ceded, and wishing to testify their gratitude on the present occasion, have assigned such individuals certain locations of land, and united in a strong appeal for the allowance of the same in this treaty; and whereas no such reservations can be permitted in carrying out the special directions of the President on this subject, it is agreed, that, in addition to the general fund set apart for half-breed claims, in the sixth article, the sum of forty-eight thousand one hundred and forty-eight dollars shall be paid for the extinguishment of this class of claims, to be divided in the following manner: To Rix Robinson, in lieu of a section of land, granted to his Indian family, on the Grand river rapids, (estimated by good judges to be worth half a million,) at the rate of thirty-six dollars an acre: To Leonard Slater, in trust for Chiminonoquat, for a section of land above said rapids, at the rate of ten dollars an acre: To John A. Drew, for a tract of one section and three quarters, to his Indian

Payment to half-breeds in lieu of reservations.

family, at Cheboigan rapids, at the rate of four dollars; to Edward Biddle, for one section to his Indian family at the fishing grounds, at the rate of three dollars: To John Holiday, for five sections of land to five persons of his Indian family, at the rate of one dollar and twenty-five cents; to Eliza Cook, Sophia Biddle, and Mary Holiday, one section of land each, at two dollars and fifty cents: To Augustin Hamelin junr, being of Indian descent, two sections, at one dollar and twenty-five cents; to William Lasley, Joseph Daily, Joseph Trotier, Henry A. Levake, for two sections each, for their Indian families, at one dollar and twenty-five cents: To Luther Rice, Joseph Lafrombois, Charles Butterfield, being of Indian descent, and to George Moran, Louis Moran, G. D. Williams, for half-breed children under their care, and to Daniel Marsac, for his Indian child, one section each, at one dollar and twenty-five cents.

Payment to chiefs.

ARTICLE TENTH. The sum of thirty thousand dollars shall be paid to the chiefs, on the ratification of this treaty, to be divided agreeably to a schedule hereunto annexed.

Annuities to two aged chiefs.

ARTICLE ELEVENTH. The Ottawas having consideration for one of their aged chiefs, who is reduced to poverty, and it being known that he was a firm friend of the American Government, in that quarter, during the late war, and suffered much in consequence of his sentiments, it is agreed, that an annuity of one hundred dollars per annum shall be paid to Ningweegon or the Wing, during his natural life, in money or goods, as he may choose. Another of the chiefs of said nation, who attended the treaty of Greenville in 1793, and is now, at a very advanced age, reduced to extreme want, together with his wife, and the Government being apprized that he has pleaded a promise of Gen. Wayne, in his behalf, it is agreed that Chusco of Michilimackinac shall receive an annuity of fifty dollars per annum during his natural life.

Expenses of this treaty to be paid by United States.

ARTICLE TWELFTH. All expenses attending the journeys of the Indians from, and to their homes, and their visit at the seat of Government, together with the expenses of the treaty, including a proper quantity of clothing to be given them, will be paid by the United States.

Right of hunting on lands ceded.

ARTICLE THIRTEENTH. The Indians stipulate for the right of hunting on the lands ceded, with the other usual privileges of occupancy, until the land is required for settlement.

In testimony whereof, the said Henry R. Schoolcraft, commissioner on the part of the United States, and the chiefs and delegates of the Ottawa and Chippewa nation of Indians, have hereunto set their hands, at Washington the seat of Government, this twenty-eighth day of March, in the year one thousand eight hundred and thirty-six.

Henry R. Schoolcraft.
John Hulbert, secretary.
Oroun Aishkum, of Maskigo, his x mark,
Wassangaze, of Maskigo, his x mark,
Osawya, of Maskigo, his x mark,
Wabi Windego, of Grand river, his x mark,
Megiss Ininee, of Grand river, his x mark,
Nabun Ageezhig, of Grand river, his x mark,
Winnimissagee, of Grand river, his x mark,
Mukutaysee, of Grand river, his x mark,
Wasaw Bequm, of Grand river, his x mark,
Ainse, of Michilimackinac, his x mark,
Chabowaywa, of Michilimackinac, his x mark,
Jawba Wadiek, of Sault Ste. Marie, his x mark,
Waub Ogeeg, of Sault Ste. Marie, his x mark,

Kawgayosh, of Sault Ste. Marie, by Madyssage, his x mark,
Apawkozigun, of L'Arbre Croche, his x mark,
Keminitchagun, of L'Arbre Croche, his x mark,
Tawaganee, of L'Arbre Croche, his x mark,
Kinoshamaig, of L'Arbre Croche, his x mark,
Naganigobowa, of L'Arbre Croche, his x mark,
Onaisino, of L'Arbre Croche, his x mark,
Mukuday Benais, of L'Arbre Croche, his x mark,
Chingassamo, of L'Arbre Croche, his x mark,
Aishquagonabee, of Grand Traverse, his x mark,
Akosa, of Grand Traverse, his x mark,
Oshawun Epenaysse, of Grand Traverse, his x mark.

UNITED STATES OF AMERICA
IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
BAY MILLS INDIAN COMMUNITY,
Plaintiff-Intervenor,
SAULT STE. MARIE TRIBE OF
CHIPPEWA INDIANS,
Plaintiff-Intervenor,

-v-

STATE OF MICHIGAN, MICHIGAN
NATURAL RESOURCES COMMISSION,
and its agents, DR. HOWARD A.
TANNER, Director of the
Department of Natural Resources;
DR. WAYNE H. TODY, Chief,
Fisheries Division, Department
of Natural Resources; and
GEORGE DAHL, Chief, Law
Enforcement Division, Department
of Natural Resources,
Defendants.

No. M 26-73 C.A.

AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT
AND PERMANENT INJUNCTION

The United States of America, by Frank S. Spies, United States Attorney for the Western District of Michigan, acting under the authority of the Attorney General and at the request of the Secretary of the Interior, complains and alleges as follows:

CLAIM FOR RELIEF

1. This Court has jurisdiction by reason of the fact that the United States of America is a plaintiff. 28 USC § 1345.
2. The United States brings this action in its own behalf and on behalf of both the Bay Mills Indian Community and the

Sault Ste. Marie Tribe of Chippewa Indians, both being recognized by the Secretary of the Interior as Indian tribes, bands or communities.

3. The United States has entered into treaties with both Indian tribes mentioned in paragraph 2, including the Treaty of March 28, 1836, with the Ottawa and Chippewa Nations of Indians. 7 Stat. 491.

4. Both the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians are organized under the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, as amended by the Act of June 15, 1935, 49 Stat. 378. Both tribes of Indians still remain under the protective arm of the United States. Hunting, fishing, trapping and gathering fruits of the land were essential methods of obtaining food for the existence of these Indians at the time the aforementioned treaty was entered into, and plaintiff alleges that the right to hunt, fish, trap and gather fruits of the land are aboriginal rights which were confirmed by the Treaty of March 28, 1836. Included in these rights was the right to fish in the waters of Lakes Superior, Huron and Michigan adjacent to the lands ceded by the Treaty of March 28, 1836, and adjacent to the lands reserved thereby, including the connecting waters of said lakes.

5. Defendant has been, for a number of years, interfering with the rights of the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians to fish in such waters of Lakes Superior, Huron and Michigan and the waters connecting said lakes by enforcing the fishing laws and regulations of the State of Michigan against members of the Bay Mills Community and the Sault Ste. Marie Tribe of Chippewa Indians.

6. Due to arrests by the defendant and subsequent prosecutions and pending prosecutions in the State Courts of Michigan, as well as threats of further arrests and prosecutions, and the threat of confiscation of personal property, members of the Bay Mills Indian Community and of the Sault Ste. Marie Tribe of Chippewa Indians are not able fully to exercise their treaty-protected rights as mentioned in paragraph 4 above. The inability of the members of these two Indian tribes to exercise their treaty-protected rights has seriously affected the health and economic well-being of their families by sharply reducing the availability of fish from Lakes Superior, Huron and Michigan and connecting waters which has been a traditional source of food for both subsistence and income.

7. Defendant has been, for a number of years, interfering with the rights of the Bay Mills Indian Community to manage the waters of its reservation including the regulation of fishing therein for all purposes by all persons, by means of enforcing the fishing laws of the State of Michigan therein. Defendant's interference has been particularly concentrated on that portion of the reservation of the Bay Mills Indian Community which includes Whitefish Bay of Lake Superior.

8. Due to the enforcement of the fishing laws of the State of Michigan in the Whitefish Bay portion of the reservation, the Bay Mills Indian Community has been unable to manage part of its reservation which has seriously affected the economic well-being of the Community by substantially diminishing an economic resource reserved to the Community.

9. Plaintiff alleges on information and belief that the above-mentioned acts of the defendant in the enforcement of its

fishing laws against members of the Bay Mills Community and the Sault Ste. Marie Tribe of Chippewa Indians and against all persons in Whitefish Bay is a result of defendant's erroneous interpretation of the Treaty of July 31, 1855, 11 Stat. 621, as abrogating those rights confirmed by the Treaty of March 28, 1836. Plaintiff further alleges that the defendant, its officers and agents, acting under color of State law, have no jurisdiction whatsoever to enforce any State statute or regulation in such a manner as to prevent the Bay Mills Indian Community or the Sault Ste. Marie Tribe of Chippewa Indians from exercising treaty-protected rights.

10. The plaintiff has no adequate remedy at law because:

(a) The damages which have been and will be sustained by the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians and the members thereof are not susceptible of monetary determination;

(b) The rights of the Indian tribes to hunt, fish, trap, gather fruits of the land, regulate and manage the resources of their reservation, and exercise other treaty rights confirmed by treaties with the United States are unique and should be specifically protected; and

(c) In the case of criminal prosecutions pending or threatened by the State or its officers purporting to act under the authority of State statutes or regulations, these Indians have no remedy at all except at the risk of suffering fines or imprisonment, involving a multiplicity of legal proceedings.

WHEREFORE, the plaintiff prays for judgment as follows:

1. Determining and declaring that the Bay Mills Indian Community and the Sault Ste. Marie Tribe of Chippewa Indians

both have aboriginal rights confirmed by treaty, which may be exercised through their members, to fish in the waters of Lakes Superior, Huron and Michigan adjacent to the lands ceded by the Treaty of March 28, 1836, and adjacent to the lands reserved thereby, including the connecting waters of said lakes.

2. Determining and declaring that the State of Michigan does not have the jurisdiction or right to control or regulate fishing by the Bay Mills Indian Community or by the Sault Ste. Marie Tribe of Chippewa Indians or by the members thereof within the waters of Lakes Superior, Huron and Michigan adjacent to the lands ceded by the Treaty of March 28, 1836, and adjacent to the lands reserved thereby, including the connecting waters of said lakes.

3. Determining and declaring that the State of Michigan does not have the jurisdiction or right to control or to regulate fishing by any person within the waters of the Bay Mills Indian Community reservation, including Whitefish Bay of Lake Superior.

4. Enjoining the defendant, its agents and employees, from enforcing the fishing laws and regulations of the State of Michigan against the Bay Mills Indian Community, the Sault Ste. Marie Tribe of Chippewa Indians or the members thereof while fishing within the waters of Lakes Superior, Huron or Michigan adjacent to the lands ceded by Treaty of March 28, 1836, and adjacent to the lands reserved thereby, including the connecting waters of said lakes.

5. Enjoining the defendant, its agents and employees, from enforcing the fishing laws and regulations of the State of Michigan against any person fishing within the Bay Mills

6. For such other and additional relief as the plaintiff may be entitled to, in accordance with equity and good conscience.

7. For costs of this action.

Dated: June 9, 1976

UNITED STATES OF AMERICA

BY

A handwritten signature in cursive script, reading "Frank S. Spies", written over a horizontal line.

Frank S. Spies
United States Attorney
Western District of Michigan
544 Federal Building
Grand Rapids, Michigan 49502