

Tribe's Case Status letter update outline

ECLA and PORA are writing to update you on the status of the Little Traverse Bay Band of Odawa Indians v. Governor Whitmer, and the Intervening Defendants, including ECLA and PORA.

I. Governor Appointed LTBB Member as Deputy Legal Counsel

First, of particular interest is the appointment this March of Wenona Singel as deputy legal counsel to the office of the Governor, whose duties include advising the Governor on tribal issues. Ms. Singel is a lawyer, a Law Professor and a Little Traverse Bay Band member. Ms. Singel practiced with a prominent firm that represents a number of tribes throughout the country. Because she is a member of the LTBB she has been recused from all issues dealing with the LTBB and the reservation case. For now, the Attorney General's Office remains on course in defending the State against the LTBB's claims in the lawsuit. This appointment may underscore the importance of ECLA and PORA continuing a vigorous defense and why they became involved in the case in the first place.

II. A Recap of the December 2018 Court Decisions on the Motions for Summary Judgment (Motions to Dismiss)

As reported in a prior litigation update letter, a Motion for Summary Judgment filed by the municipal Defendants asking that the case be dismissed was denied by the Court in December. Also the Tribe's Motion for Summary Judgment asking for dismissal of a defense raised by ECLA and PORA was denied by the court as premature since such a motion would only need to be decided if it was determined by the Court that a reservation existed.

III. The March 2019 Motions for Summary Judgment

1. ECLA and PORA have filed a Motion for Summary Judgment asking the Court to dismiss the Tribe's Complaint based on the following points:

a. A plain reading of Article V of the 1855 Treaty establishes that the Treaty did not establish a reservation. The relevant part of Article V reads as follows:

"...all land remaining unappropriated by or unsold to the Indians after the expiration of the last mentioned term (i.e. two five year periods), may be sold or disposed of by the United States as in the case of all other public lands."

If the land was to return to public market for sale, how can this be a permanent reservation?

b. Even if the Treaty did create a reservation and was not terminated by its own language in Article V, an Act of Congress in 1872 did terminate the reservation. This Act

of Congress had comparable language to that in the Treaty, stating: “...*undisposed of land shall be restored to public market*”.

c. Even if the 1872 Act did not terminate the reservation, it “disestablished/diminished” the reservation. This Act clearly established the intent of Congress.

d. During Treaty negotiations, journals were kept. In these journals are many statements by the Commissioner of Indian Affairs, George Manypenny, Federal Agent Henry Gilbert, and William Richmond, Superintendent of Indian Affairs, that support the intent of the Treaty as not creating a permanent reservation, but rather creating an area where Indians could own land the same as non-Indians. The land obtained by Indians was owned by individual Indians, not the Tribe as in the case of a reservation.

2. The State has filed a Motion for Summary Judgment asking the Court to dismiss the Tribe’s Complaint, arguing the following points:

a. The State’s arguments are consistent with that of the ECLA and PORA.

b. In addition, the State takes the legal position that the Court lacks jurisdiction because the Tribe has not pleaded and provided evidence of a modern-day case or controversy. The concept is that there must be an actual factual dispute between the Tribe and the State and there is none. In other words, in what way has the State specifically interfered with or deprived the Tribe of a right?

3. The Cities of Harbor Springs and Petoskey, and Emmet and Charlevoix Counties have filed a Motion for Summary Judgment asking the Court to dismiss the Tribe’s Case asserting the following points:

a. They too argue that the clear language of the Treaty does not create a permanent reservation.

b. They also argue that the language of Article III of the Treaty “released” the United States from all liabilities, and as such this would include a claim of a reservation having been established.

4. The Tribe filed its Motion for Summary Judgment asking the Court to dismiss the defenses of the Municipal Defendants, asserting the following points:

a. The language of Article III of the Treaty cannot be read to say it released a claim by the Tribe of a reservation under the Treaty.

b. The Defendant Associations did not produce any evidence to support their Exemption-Diminishment Claim.

5. The Townships filed no separate motion, but concurred in the other Defendants’ Motions for Summary Judgment.

IV. Trial is now scheduled for the latter part of 2020.

. ECLA and PORA will continue to keep you apprised as this case progresses. Thank you for your support of ECLA and PORA in their defense.