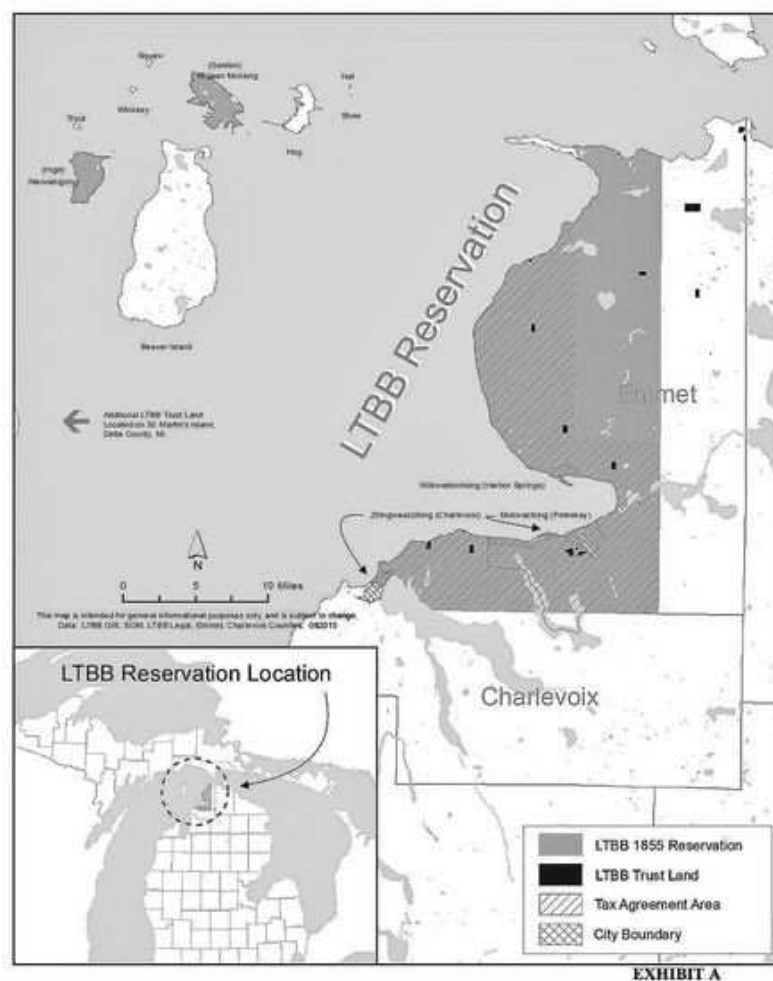


Little Traverse Bay Bands lawsuit leaves some worried, but should they?

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Little Traverse Bay Bands of Odawa Indians Reservation and Trust Lands



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HARBOR SPRINGS — By asking a federal court to affirm its reservation boundaries, the Little Traverse Bay Bands of Odawa Indians looks to clarify that it holds jurisdiction in a 337-square-mile swath of Northern Michigan.

For other entities with stakes in the area, though, the scope of that jurisdiction remains a source of uncertainty. Some intervening parties have voiced worries about the boundary affirmation's possible impacts for the tribe's neighbors.

The case, filed against Michigan Gov. Rick Snyder in 2015 in U.S. District Court in Grand Rapids, will determine whether borders of the Odawa tribe's reservation set by an 1855 treaty are still considered valid. The territory in question includes roughly the western two-thirds of Emmet County, portions of northern Charlevoix County and Garden and Hog islands in northern Lake Michigan.

The suit alleges the state is inconsistent with meeting its side of the agreement with regard to the boundaries, posing a threat to the tribe's ability to govern its members. The tribe seeks a court judgment that the reservation area is Indian country under federal law.

The tribe also calls for a permanent injunction preventing Michigan and "the state's agents, servants, employees, officers and attorneys, municipalities, and anyone acting in concert with them" from asserting jurisdiction over tribal citizens in ways inconsistent with the area's status as Indian country.

U.S. District Judge Paul Maloney has called for the case to proceed in two phases, which together could take multiple years to unfold. The first of these — with a trial expected to be more than a year away if the matter reaches that stage — would focus on the 19th century treaty's intent and the modern-day question of the boundaries' existence. If the tribe prevails, a second phase of the case would focus on how the tribe and other governmental units would share jurisdiction inside the boundaries.

In answering the tribe's written complaint, the Michigan attorney general's office disputed that the reservation covers all of the territory described by the Odawa. The state also countered that the "inconsistent treatment" of the reservation boundaries is unspecified, and denied that there was a violation of the 1855 treaty with regard to it.

Several groups have entered the case as intervenors, which allows them to be involved if a settlement of the case is reached. Participants in these groups include Emmet and Charlevoix counties, city and township governments in the area affected by the treaty ruling and two nonprofit groups, the Emmet County Lakeshore Association and Protection of Rights Alliance.

Looking for affirmation

In filing the lawsuit, Little Traverse Bay Bands general counsel James Bransky said the tribe aims to better position itself to deal with certain concerns in its home territory.

"A central concern is sort of an honoring of the tribal history and the treaty, and what those mean for the tribe today and its citizens," he said.

Protection of Native American graves and remains is one area of concern, Bransky noted.

Under the Native American Graves Protection and Repatriations Act, the lawsuit complaint notes that a tribe would have authority over American Indian graves and funerary objects within an established reservation, regardless of land ownership status. The complaint alleges that some local governments and municipalities don't follow that law's specified procedures when it comes to inadvertent discoveries of remains or planned excavations affecting tribal cultural items.

Child protection and other family services are another legal matter in which the tribe aims to better define its jurisdiction among its members.

"The local social services have actually been cooperative to work with," Bransky said, "but under the tribe's understanding of the law, it should be exclusively in charge of its family services and care within the reservation."

Raising concerns

As some parties intervening in the case see it, the push to affirm the reservation presents some big uncertainties for non-tribal elements of the community.

While the Odawa tribe has pointed to concerns such as child welfare authority in pursuing the case, "jurisdiction is much broader than that," said Petoskey city attorney Jim Murray. "They haven't limited it or articulated it to mean what it would include or exclude."

If the court restricts state and local officials from acting in ways inconsistent with tribal jurisdiction or authority, Murray noted that state and local officials' scope of authority on a variety of matters could be in question. These matters could include taxation, environmental regulations, law enforcement, building codes and zoning rules.

"None of those specifically have been taken off the table or limited in any fashion by the tribe," Murray said.

R. Lance Boldrey is an attorney representing two private intervenors in the case. One is the Emmet County Lakeshore Association, a nonprofit group made up primarily of property owners along the Lake Michigan shore between Harbor Springs and Cross Village. Boldrey said the other nonprofit, the Protection of Rights Alliance, has some overlap in participation with the lakeshore group, but also includes businesses and other interested individuals.

While Boldrey said the state's legal representatives so far have done a good job defending community members' concerns in the court case, "there's always an uncertainty in this type of (case) whether governments are going to fully represent interests of local citizens."

"For the local residents and local businesses, the only way to get a seat at the table in this case was to intervene, and that's why they did so," he added.

Boldrey said the nonprofit groups are concerned that the tribe hasn't stated specifics about the scope of authority it's seeking, and also about the outcomes of court cases elsewhere that deal with tribes' jurisdiction in reservation areas.

In a lakeshore association newsletter and other online postings, the nonprofits note concerns about a variety of ramifications that the tribe's neighbors could face if the reservation is found to exist — seeing potential for these to diminish quality of life and property values.

One concern involves the potential loss of local zoning authority over tribal members and their properties, perhaps diminishing policies meant to protect the community's character — such as Harbor Springs' prohibition on fast-food restaurants.

Other examples of the concerns include weakening of the area's property-tax base and a blurring of the lines between tribal police authority and that of state and local agencies — perhaps impeding effective law enforcement. Pointing to a case in Nebraska — in which the Omaha Tribe asserted liquor licensing and taxing authority in Pender, a village with a largely non-Indian population — the groups noted concerns that a similar outcome could be possible locally, as well. The U.S. Supreme Court recently ruled against state and village officials in Nebraska when they challenged that community's status as an Indian reservation.

As Bransky sees it, the Little Traverse Bay Bands' neighbors shouldn't fear diminishment of their property rights or quality of life.

"The case in no way threatens or leads to anything threatening anyone's land title," he said, adding that the Odawa tribe isn't seeking to remove its members' fee lands (those not held in federal trust status on the tribe's behalf) from property tax rolls.

As for concerns based on the liquor tax case in Nebraska, "under federal law right now, I'm certainly comfortable that the tribe would not have liquor regulatory authority on non-Indian-owned parts of the reservation," Bransky said.

When it comes to zoning matters, "those are the issues where the tribe shares all the concerns of preserving the character of the area," he added.

The Little Traverse Bay Bands attorney also noted cases when the Odawa tribe has cooperated with other local entities on mutually beneficial projects — such as securing allotments of U.S. Bureau of Indian Affairs road funding to help pay for city and county road

construction — and said an affirmed reservation might open further opportunities for this type of cooperation.

Bransky believes the federal government and Supreme Court have generally been sensitive to non-Indian entities' concerns in tribal jurisdiction cases. He also pointed to a case downstate as an example of how such entities' concerns can be resolved when a reservation's boundaries are affirmed.

In that case, the Saginaw Chippewa Indian Tribe of Michigan filed a lawsuit against the state in federal court in 2005, seeking recognition of reservation boundaries — taking in a portion of the city of Mount Pleasant, as well as all or part of several nearby townships in Isabella County. By way of court-facilitated mediation, the tribe reached a settlement with city, county and state officials in 2010. The settlement incorporated several intergovernmental agreements, detailing authority that the various entities would have over matters such as law enforcement, zoning and land use.

While Boldrey noted that the Saginaw Chippewa case didn't resolve every concern of local officials in the reservation area, Bransky still sees it as an example with potential relevance for the Little Traverse Bay Bands case.

"We think we could do something similar here," he said. "We can look at that model and what has and hasn't worked."

Bransky noted a willingness on the tribe's part to pursue a mediated approach to settlement.

"In our opinion, the sooner the parties go into that, the better as far as the parties' resources (are concerned)," he said,

Attorney John Wernet has dealt with state-tribal legal interactions in his current role as the Sault Ste. Marie Tribe of Chippewa Indians' general counsel, and also in his past capacity as a state-tribal liaison in former Gov. Jennifer Granholm's administration.

When it comes to questions of tribal boundaries' existence, "the reservation status has a lot more significance for the tribe than it does for the locals," he noted.

Wernet didn't want to comment on the Odawa lawsuit's merits, and noted that that tribe's dealings with the federal government followed a somewhat different historical path than the Saginaw Chippewa's. But he also sees the case from Isabella County as one where tribal and non-tribal entities were able to sort through jurisdictional concerns with a "really remarkable" result.

"Representatives of both governments were able to get conversation going, and in a constructive way," he said.

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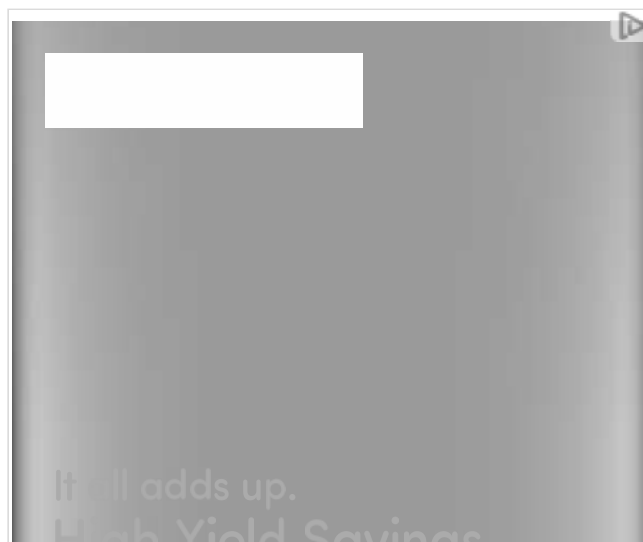
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