

UNITED STATE DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LITTLE TRAVERSE BAY BANDS OF
ODAWA INDIANS, a federally recognized
Indian tribe,

Plaintiff,

Court File No. 15-850

v.

RICK SNYDER, Governor of the State of
Michigan

Defendant.

Complaint for Declaratory and Injunctive Relief

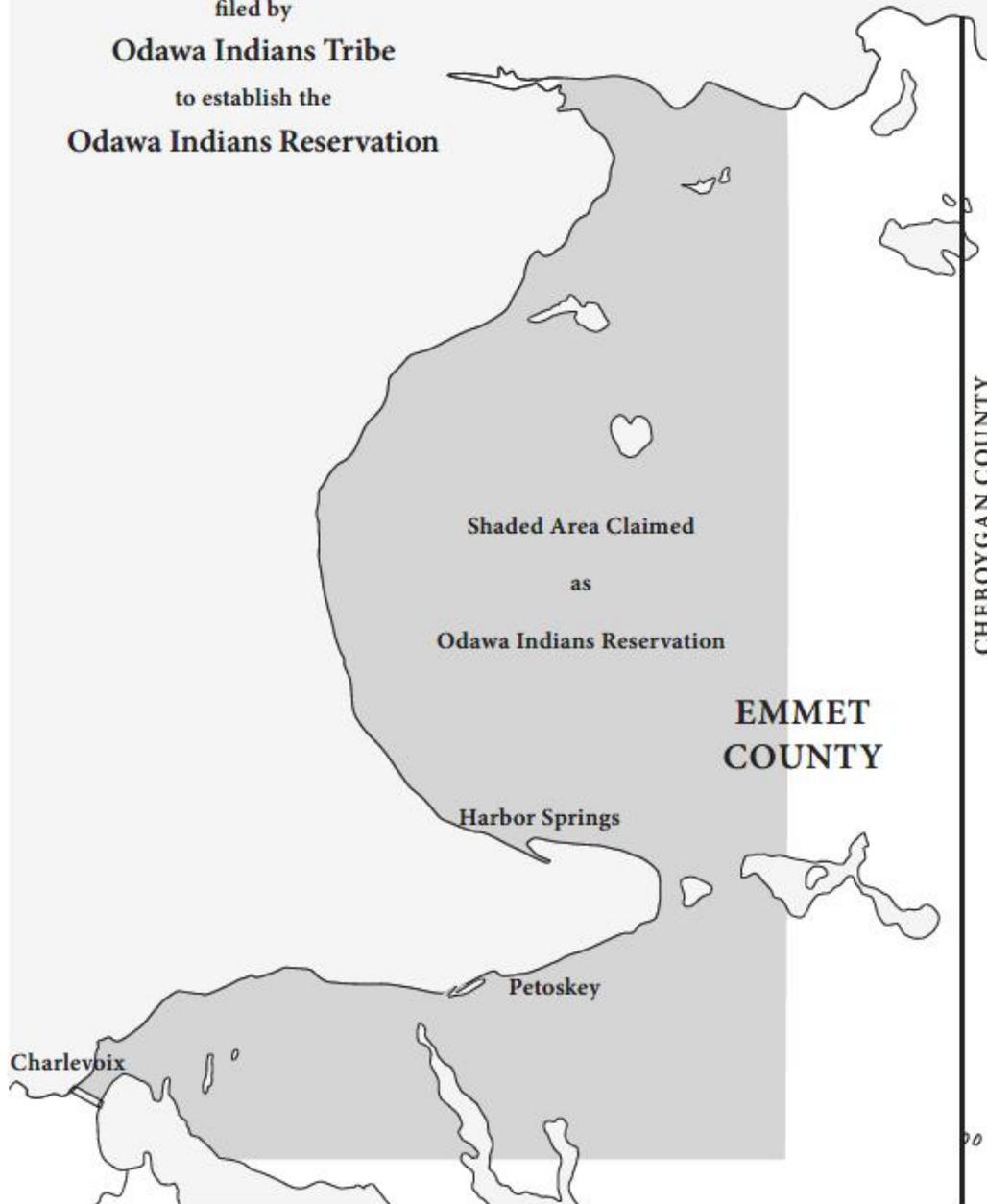
U.S. Federal Court Lawsuit

filed by

Odawa Indians Tribe

to establish the

Odawa Indians Reservation



The Tribe's Public Comments on the Lawsuit

- “There’s been some false information that has been released out there that has people quite concerned; but a lot of **it is not true. It will not affect the cities or townships with their zoning or laws** but our tribal citizen who live within the reservation would have to follow tribal law and regulation.” Regina Gasco-Bentley, Tribal Chair, *Detroit Free Press*, December 25, 2016
- “In addition to bringing clarity to other issues, ... **affirming the reservation boundary will cement our ability to protect our children, families, elder and ancestral remains**” and confirm **“exclusive jurisdiction over our children so that the tribe can make decisions about how our children are cared for, not the State of Michigan.”** *Petoskey News Review*, February 21, 2017.

The Tribe's Demand for Relief

WHEREFORE, the Tribe respectfully asks this Court to enter judgment in its favor and to:

- I. Issue a declaratory judgment, pursuant to 28 U.S.C. § 2201 and § 2202 and other applicable law, against the Defendant Governor of Michigan declaring that the Little Traverse Reservation as established by the Executive Order of 1855 and the 1855 Treaty of Detroit exists today, and that **all lands within the Reservation are Indian country under federal law.**

The Tribe's Demand for Relief (Continued)

- II. **Issue a permanent injunction**, pursuant to the Court's equity jurisdiction, 42 U.S.C. § 1983, and other applicable law, **forever barring** the current and future Defendant Governor of Michigan, as well as the State's agents, servants, employees, officers and attorneys, municipalities, and anyone acting in concert with them:
 1. **From asserting jurisdiction** over the Tribe or Tribal citizens in any way inconsistent with the Reservation's status as Indian country; and
 2. From taking any actions that would interfere with the rights of the Tribe and its citizens under federal law to be **otherwise free of state law and regulation** within the Little Traverse Reservation.

Government Intervenors

- **Counties:**

- Emmet
- Charlevoix

- **Cities:**

- Charlevoix
- Harbor Springs
- Petoskey

- **Townships:**

- Bliss
- Center
- Charlevoix
- Cross Village
- Friendship
- Little Traverse
- Pleasantview
- Readmond
- Resort
- West Traverse

Non-Government Intervenors

- Emmet County Lakeshore Association
- Protection of Rights Alliance

1855 Treaty Extracts

Article I. The United States will withdraw from sale for the benefit of said Indians as hereinafter provided; all the unsold public lands within the State of Michigan embraced in the following description to wit:

The United States will give to each Ottawa and Chippewa Indian being the head of a family, 80 acres of land, and to each single person over 21 years of age, 40 acres of land, and to each family of orphan children under 21 years of age containing two or more persons, 80 acres of land, and to each single orphan child under 21 years of age, 40 acres of land to be selected and located within the several tracts of land hereinbefore described under the following rules and regulations: --

All the land embraced within the tracts hereinbefore described, that shall not have been appropriated or selected within five years, shall remain the property of the United States, and the same shall thereafter, for the further term of five years, be subject to entry in the usual manner and at the same rate per acre as other adjacent public lands are then held, by Indians only; and all lands, so purchased by Indians, shall be sold without restriction, and certificates and patents shall be issued for the same in the usual form as in ordinary cases; and all lands remaining unappropriated by or unsold to the Indians after the expiration of the last-mentioned term, may be sold or disposed of by the United States as in the case of all other public lands.

LTBB Constitution, Adopted February 1, 2005

- "Reservation" means all lands within the boundaries of the reservations for the Little Traverse Bay Bands of Odawa Indians as set out in Article I, paragraphs third and fourth of the Treaty of 1855, 11 Stat. 621, plus any lands set out in Articles Second and Third of the Treaty of March 28, 1836, 7 Stat. 491, in the event that the 1836 reservation is determined to include lands which are not included within the 1855 reservation, plus any lands outside of those boundaries which are now or in the future declared to be Little Traverse Bay Bands of Odawa Indians reservation by the U.S. Department of the Interior.
- The jurisdiction of the Little Traverse Bay Bands of Odawa Indians shall extend to all territory set forth in Section (A) of this Article **and to any and all persons or activities therein** based upon the inherent sovereign authority of the Little Traverse Bay Bands of Odawa Indians and Federal law. The jurisdiction includes but is not limited to air, water, surface, subsurface, natural and cultural resources, and any interests therein.

Case Schedule

- Phase I
 - Did 1855 Treaty establish a “reservation?”
 - If so, was it later diminished or disestablished?
- 97 witnesses
 - 15 experts
 - 82 lay witnesses
- Early 2019 trial expected
 - expert reports 8/15/17
 - rebuttal reports 11/14/2017
 - discovery ends 5/22/2018
 - motions 8/20/2018
- Phase II
 - Injunctive relief if reservation exists

Impacts: Exemption from Local and State Laws and Regulations

- Zoning
- Business regulation (signage, parking, local licensure)
- Highway signage
- Property taxes
- Law enforcement
- Tribally authorized gaming

Impacts: Tribal Authority Over Non-Indians

- Liquor licenses, including taxation
- EPA authority that is presently delegated to State (Clean Water and Clean Air Acts; i.e., standards and permitting for WWTP's, stormwater discharge for construction, etc.)
- Regulate conduct involving transactions with tribal members (employment, contract and tort claims, etc.)

Impacts: Tribal Court Jurisdiction

- Transactions between tribal member and non-member:
 - Employment
 - medical malpractice
 - product liability
- Conduct that threatens the Tribe
 - high standard, but groundwater?

The Tribe's Clean Water Act

- Addresses discharges of pollutants into LTBB Waters from point and non-point sources ... damages to wetlands, [and] the disposal of sewage sludge.
- “LTTB Waters” defined as “all ground water and surface waters that are **in or border the Reservation.**”

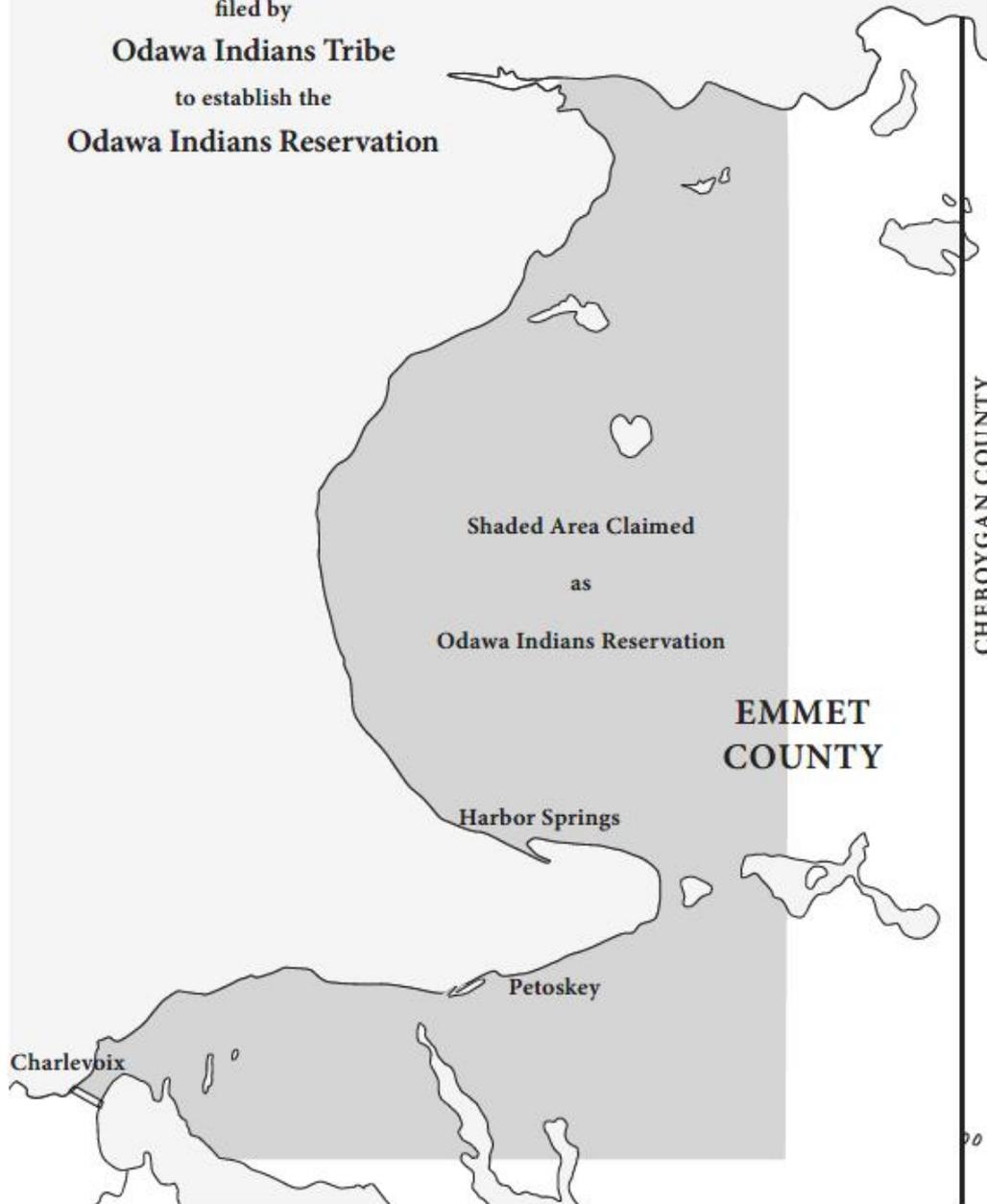
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Impacts: Real World Examples

- No property taxes or state criminal jurisdiction: Keweenaw Bay Indian Community, 1854 Treaty
- No state regulation; tribe can allow gaming machines in non-Indian businesses: White Earth Nation, 1867 Treaty
- Non-Indians subject to tribal liquor law/tax: Village of Pender Nebraska, 2016 U.S. Supreme Court decision
- No state income tax: Stockbridge-Munsee, 1856 Treaty
- Product liability claim in tribal court: Cherokee Nation suit against pharma's
- Tribal regulation of groundwater use by farm: must challenge jurisdiction in tribal court, 7/26/2017 U.S. District Court decision in 10-year-old case (Rincon Band of Mission Indians)
- Suit in tribal court against non-Indian police by Tribe and tribal member's estate: must challenge jurisdiction in tribal court, 7/11/2017 U.S. Court of Appeals decision (Ute Indian Tribe of Uintah and Ouray Reservation)

Tax Deductible Contributions to the Alliance

Protection of Rights Alliance Foundation

P.O. Box 28

Harbor Springs, MI 49740