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



UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 -vs-)
)
 STATE OF MICHIGAN,)
)
 Defendant.)

No. M 26-73

COMPLAINT FOR DECLARATORY JUDGMENT
AND PERMANENT INJUNCTION

The United States of America, by John Milanowski,
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 is plaintiff. 28 U.S.C. § 1345.
2. The United States brings this action in its own behalf and in behalf of the Bay Mills Indian Community which is a tribe or a band of Indians recognized as such by the Secretary of the Interior.
3. The United States has entered into treaties with the tribe or band mentioned in paragraph 2, including the Treaty of March 28, 1836, with the Ottawa and Chippewa Nations of Indians (7 Stat. 491).
4. The Bay Mills Indian Community is organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 984),

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as amended by the Act of June 15, 1935 (49 Stat. 378). These Indians are still 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 very existence of these Indians at the time this 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 Lake Superior.

5. Defendant has been, for a number of years, interfering with the rights of the Bay Mills Indian Community to fish in the waters of Lake Superior by enforcing the fishing laws of the State of Michigan against members of the Bay Mills Indian Community.

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 are not able fully to exercise their treaty-protected rights as mentioned in paragraph 4. The inability of members of the Bay Mills Indian Community 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 Lake Superior which has been a traditional source of food for subsistence and income.

7. 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 Indian Community as to their fishing in Lake Superior is the result of defendant's 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 to enforce any State statute in such manner as to prevent the Bay Mills Indian Community from exercising its treaty-protected rights.

8. 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 members thereof, are not susceptible of monetary determination;

(b) The rights of the Indians to hunt, fish, trap, gather fruits of the land, and to 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, these Indians have no remedy at all except at the risk of suffering fines or imprisonment, involving multiplicity of legal proceedings.

WHEREFORE, the plaintiff prays for judgment as follows:

1. Determining and declaring that the Bay Mills Indian Community has an aboriginal right confirmed by treaty, which may be exercised through its members, to fish in the waters of Lake Superior.

2. Determining and declaring that the State of Michigan does not have the right to control or to regulate fishing by the Bay Mills Indian Community or members thereof within the waters of Lake Superior.

3. Enjoining the defendant, its agents and employees, from enforcing the fishing laws of the State of Michigan against the Bay Mills Indian Community or members thereof while fishing within the waters of Lake Superior.

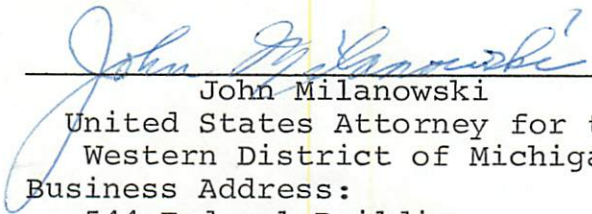
4. For such other and additional relief as the plaintiff may be entitled to, in accordance with equity and good conscience.

5. For the costs of this action.

Dated: April 9, 1973

UNITED STATES OF AMERICA

By



John Milanowski
United States Attorney for the
Western District of Michigan
Business Address:
544 Federal Building
Grand Rapids, Michigan 49502