

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LAC COURTE OREILLES BAND OF
LAKE SUPERIOR CHIPPEWA INDIANS;
RED CLIFF BAND OF LAKE SUPERIOR
CHIPPEWA INDIANS; SOKAOGON
CHIPPEWA INDIAN COMMUNITY;
ST. CROIX CHIPPEWA INDIANS OF
WISCONSIN; BAD RIVER BAND OF THE
LAKE SUPERIOR CHIPPEWA INDIANS;
and LAC DU FLAMBEAU BAND OF
LAKE SUPERIOR CHIPPEWA INDIANS,

Plaintiffs,

v.

Case No. 74-C-313-C

STATE OF WISCONSIN, WISCONSIN
NATURAL RESOURCES BOARD,
CATHY STEPP, KURT THIEDE and
TIM LAWHERN,

Defendants.

AFFIDAVIT OF MICHAEL LUTZ

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Michael Lutz, being first duly sworn on oath, deposes and says:

1. I make this affidavit on the basis of my own personal knowledge and to the best of my recollection.

2. From 1980 through my retirement in May, 2011, I served as an attorney in the Wisconsin Department of Natural Resources (DNR) Bureau of Legal Services. In that capacity

I was the DNR attorney responsible for all issues relating to state parks, law enforcement and treaty rights. I became the deputy chief counsel to DNR in September of 2004, acting chief counsel in December of 2008, and chief counsel in December of 2010.

3. Subsequent to the issuance of the final judgment in this case in 1991, through May 2011, I was the DNR's lead negotiator in the stipulation amendment process, including the negotiations leading to the parties' 2011 entry into an agreement known as the "Stipulation For Technical, Management And Other Updates: Second Amendment Of The Stipulations Incorporated In The Final Judgment."

4. Unlike its predecessor, the 2009 agreement, which was known as the "Stipulation For Technical, Management, and Other Updates: First Amendment Of Stipulations Incorporated into Final Judgment," the 2011 agreement contains a provision, in section III.A.2, requiring both consultation with and agreement by the State of Wisconsin before a Commission order updating the Model Code and tribal codes may issue. I know that this State approval process was added due to the State's concern that even a good faith effort to translate the language of a State law into the language of the Model Code could have unanticipated consequences which could result in a change to the Model Code that was broader than that allowed by State law and unacceptable to the State for that reason.

5. At no time during the negotiations which resulted in the "Stipulation For Technical, Management And Other Updates: Second Amendment Of The Stipulations Incorporated In The Final Judgment" was there any discussion or agreement that the State's approval (i.e. "where consent may not be unreasonably withheld") would be constrained by the standards of the prior court decisions as stated in the November 27, 2012 affidavit of Kekek Jason Stark which has been filed in support of the plaintiffs' motion. The State was never

told of this interpretation by the Tribes and would not have agreed to it if that was the case or if the plain language of the final stipulation required such a standard. My understanding has been and remains that the term "unreasonably" in the stipulation is essentially a rational basis test. Further, a plain reading of the phrase "subject to the stipulations previously filed in this matter and the law of the case" at the end of section III.A.2., states that it limits or conditions the immediately preceding phrase concerning the Commission's issuance of orders but does not limit or condition the earlier phrase regarding the State's consent.

6. I make this affidavit in opposition to plaintiffs' for preliminary and permanent injunctive relief.

Dated this 6th day of December, 2012.

/s/ Michael Lutz

MICHAEL LUTZ

Subscribed and sworn to before me
this 6th day of December, 2012.

/s/ Quinn L. Williams

Notary Public, State of Wisconsin
My Commission: is permanent