

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,) No. 2:73-cv-26
and) Honorable Paul L. Maloney
BAY MILLS INDIAN COMMUNITY, SAULT STE.)
MARIE TRIBE OF CHIPPEWA INDIANS, GRAND)
TRAVERSE BAND OF OTTAWA AND CHIPPEWA)
INDIANS, LITTLE RIVER BAND OF OTTAWA)
INDIANS, and LITTLE TRAVERSE BAY BANDS)
OF ODAWA INDIANS,)
Plaintiff-Intervenors,)
-v-)
STATE OF MICHIGAN, et al.,)
Defendants.)
_____)

ORDER REGARDING COALITION TO PROTECT MICHIGAN RESOURCES'
MOTION

This matter is before the Court on Coalition to Protect Michigan Resources' (CMPR) motion to "confirm status as *amicus curiae*" (ECF No. 1864). CMPR wishes to confirm its status in part to "apprise this Court of the need for a status conference" to address the parties' positions regarding upcoming negotiations (ECF No. 1865 at 1, PageID.2070). Two plaintiff-intervenors, the Grand Traverse Band of Ottawa and Chippewa Indians and the Sault Ste. Marie Tribe of Chippewa Indians, oppose CMPR's motion on the grounds that it presents no justiciable issue as no party has objected to CMPR remaining in traditional *amicus curiae* status (ECF Nos. 1870, 1871). No other parties have yet responded.

The docket shows that CMPR itself is currently an amicus and has been since 2007 (ECF No. 1783), and CMPR's member organizations have been involved in this case as amici since at least the 1980s. That status has not changed, and no parties have raised objections to CMPR's amicus curiae status, per se. However, the Sault Ste. Marie Tribe of Chippewa Indians raises concerns regarding what level of participation of amici is appropriate: "[s]trict conditions should apply. . . . Amici should not give oral argument nor file briefs unless permitted by the court." (ECF No. 1871 at 5, PageID.2130). The Sault Ste. Marie Tribe advocates for a very narrow scope of amici involvement, limited only to "observer" status (*Id.*).

The Court agrees with the plaintiff-intervenors. First, CMPR's concerns about future issues that may never come before this Court are not presently justiciable. *See United States, et al., v. Mich., et al.*, 424 F.3d 438 at 444 (6th Cir. 2005) (holding that an intervenor's concerns about issues which "are not now, and possibly never will be, before the district court" were premature). Further, regarding the Sault Ste. Marie Tribe's position: CMPR's involvement in this case as a traditional amicus is within the Court's discretion. *See United States v. Mich., et al.*, 940 F.2d 143, 165 (6th Cir. 1991). The Court agrees that traditional amici are limited to a very narrow, non-adversarial role that does not rise to the level of "the full litigating status of a named party or a real party in interest." *See id.* at 165-166 (collecting cases). Amici may not "initiat[e] legal proceedings, fil[e] pleadings, or otherwise participat[e] and assum[e] control of the controversy in a totally adversarial fashion." *Id.* at 165. At this stage, with no justiciable issues before the Court, there are no traditional amicus actions available to CMPR; it may not "jump start" continued proceedings in this case.

Accordingly, the Court acknowledges that CMPR is listed as an amicus in this case, but to the extent that CMPR's motion seeks any additional relief, that request is **DENIED**.

IT IS SO ORDERED.

Date: October 8, 2019

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge