



## Little River Band of Ottawa Indians

375 River Street  
Manistee MI 49660  
(231) 723-8288

### Resolution # 03-0129-20

*Approval to Support Amicus Brief Being Drafted on behalf of the Tribes with Treaty Reserved Fishing Rights and to Support Submission of that Amicus Brief*

WHEREAS, the Tribe's status as a federally-recognized Indian tribe was reaffirmed and restored by Congress pursuant to Public Law 103-324, 108 Stat. 2156, 25 U.S.C. s. 1300k, et seq.; and

WHEREAS, the Tribe adopted a new Constitution pursuant to a vote of the membership on May 27, 1998, which became effective upon its approval by the Assistant Secretary-Indian Affairs on July 10, 1998; and

WHEREAS, the Tribal Council is delegated under Article IV, Section 7(a)(1) and (e) to promote, protect and provide for public health, peace, morals, education and general welfare of the Tribe and its members, and to engage legal counsel; and

WHEREAS, the Tribal Council has a Constitutional duty to take action as may be necessary to enhance and preserve tribal sovereignty by the affirmative exercise of governmental powers within the Tribe's territory and defending the Tribe from unwarranted intrusions upon the Tribe's right of self-government; and

WHEREAS, the Little River Band of Ottawa Indians reserved certain property rights and other attributes of sovereignty under the 1836 Treaty. These treaty based rights were confirmed, in part, by United States v. Michigan, 471 F.Supp 192 (W.D. Mich. 1979); *affirmed*, 653 F.2d 277 (6th Cir. 1981); *certiorari denied*, 454 U.S. 1124, 102 S.Ct. 971 (1981), and reaffirmed by P.L. 103-324 section 5, and are protected by the United States Constitution (Art. 1, '8, cl. 3 and Art. 6, cl. 2); and

WHEREAS, management and protection of the Band's treaty-reserved property interests in the fisheries of the treaty-ceded waters of the Great Lakes, is a critical priority of the Band and it is the responsibility of the United States, as Trustee for the Band and other 1836 Treaty Bands/Tribes; and

WHEREAS, the Tribal Council is aware of a case in which a petition for rehearing will be requested before the Ninth Circuit Court of Appeals (Anderson v. Evans, No. 02-35761) which affect the extent to which federal laws can limit the right of tribal self-regulation of the exercise of treaty rights, notwithstanding the fact that the conservation necessity standard is not implicated; and



WHEREAS, the decision of the Ninth Circuit Court of Appeals will affect the Little River Band of Ottawa Indians and other similarly situated Tribes actively managing and regulating treaty-reserved natural resources such that the Tribe should participate in the submission of an amicus brief that presents the Tribe's position regarding the correct application of the conservation necessity standard in determining the extent to which federal regulations may intrude upon tribal regulation and management of treaty resources; and

WHEREAS, the Makah Nation intends to ask the Ninth Circuit Court of Appeals to rehear and reconsider its decision in this case and similarly situated Tribes, through a team of attorneys, have been requested to develop an amicus brief that would emphasize:

1. The success of tribal regulation in treaty fisheries and the extent to which the court's approach to federal regulation of treaty fisheries threatens to disrupt those successful tribal efforts; and
2. The extent to which the court's approach conflicts with settled principles pertaining to intrusions on tribal regulation of treaty fisheries; and

---

WHEREAS, the Natural Resource Commission of the Little River Band of Ottawa Indians has requested support from the Tribal Council and Tribal Ogema in this effort.

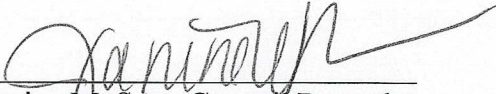
NOW THEREFORE BE IT RESOLVED THAT the Tribal Council of the Little River Band of Ottawa Indians hereby supports the drafting and submission of an amicus brief on behalf of the Little River Band and other similarly situated Tribes.

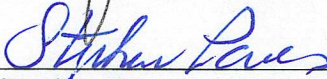
IT IS FURTHER RESOLVED THAT the Tribal Council of the Little River Band of Ottawa Indians requests the United States, through the Department of Commerce and Department of the Interior, as trustees for Tribes with treaty reserved fishing rights, to support the Tribes' efforts promote respect and deference for Tribal efforts to effectively manage and protect treaty-reserved resources and to reverse the Ninth Circuit Court of Appeals' decision as it impacts those interests in *Anderson v Evans*.

**CERTIFICATION OF ADOPTION**

This resolution was adopted by the Tribal Council of the Little River Band of Ottawa Indians its Regular Session held at the Little River Band Community Center on January 29, 2003, by a vote of 8 FOR, 0 AGAINST, 1 ABSTAINING, and 0 ABSENT. A quorum of the Tribal Council being present for such vote.

Attest:

  
Janine M. Sam, Council Recorder

  
Stephen Parsons, Council Speaker

Distribution: Council Records  
Legal Department  
Tribal Ogema  
Makah Indian Nation  
Hon. Gail Norton, U.S. Department of the Interior  
Hon. Donald Evans, U.S. Dept. of Commerce