



Little River Band of Ottawa Indians

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

Resolution # 05-0810-384

*Approval to Support Filing Motion to Intervene in Litigation to Block
The United States Environmental Protection Agency's "Cap and Trade" Mercury
Regulation and Regulation De-Listing Mercury as a Hazardous Air Pollutant
in State of New Jersey et al v. Environmental Protection Agency*

WHEREAS, the status of the *Gaá Čhíng Ziíbi Daáwaa Aníshinaábek* (Little River Band of Ottawa Indians) as a sovereign and Treaty-making power is confirmed in numerous treaties, from agreements with the initial colonial powers on this land, to various treaties with the United States; and

WHEREAS, the Little River Band of Ottawa Indians (Tribe) is descended from, and is the political successor to, the Grand River Ottawa Bands, signatories of the 1836 Treaty of Washington (7 Stat. 491) with the United States, as reaffirmed by federal law in P.L. 103-324, enacted in 1994; and

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

WHEREAS, the Tribe adopted amendments to the Constitution on April 26, 2004, which became effective upon approval by the Assistant Secretary-Indian Affairs on May 13, 2004; 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 Band 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 protect tribal sovereignty and culture by the affirmative exercise of governmental powers within the Band's territory and protecting the Band's treaty-reserved property rights; 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, surveys conducted by the Band's Natural Resource Department have confirmed that subsistence fishing remains an important part of Tribal culture and diet for a significant portion of the Band's membership; and

WHEREAS, surveys conducted by the Band's Membership Assistance Department have confirmed that a significant portion of the Band's membership have household income levels at or near the federal poverty guidelines, reinforcing the reliance of Tribal member households on access to subsistence fishing to meet household dietary needs; and

WHEREAS, mercury pollution severely limits the quantity of fish that Tribal members may safely consume, most particularly because of impacts to children that include loss of IQ, attention deficit disorder, cerebral palsy and autism; and

WHEREAS, the management and protection of the Band's treaty-reserved property interests in the fisheries and other resources within the 1836 Ceded Territory 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 United States Environmental Protection Agency (EPA) has a trust responsibility, confirmed and reinforced in Executive Order 13175, to adequately consult and coordinate with Indian tribal governments regarding the impact EPA's regulatory proposals will have on Indian people and treaty-protected resources; and

WHEREAS, the EPA's decision to approve a "cap and trade" mercury reduction rule and its decision to de-list mercury as hazardous air pollutant (HAP) fails to adequately consider the environmental, health, education, social, cultural and economic impacts continued mercury pollution has on Indian tribal governments and Nations; and

WHEREAS, the health assessment relied on by EPA in support of its "cap and trade" mercury reduction rule and its decision to de-list mercury as a HAP are fatally flawed because they fail to recognize and incorporate the cultural and subsistence fishing practices in Indian tribal communities like the Little River Band; and

WHEREAS, the EPA totally failed to carry out its mandate to consult with and coordinate with Indian tribal governments when it made the decision to regulate mercury as a non-hazardous air pollutant under a "cap and trade" system rather than under the more stringent "maximum achievable control technology" (MACT) system applied to other toxic and hazardous air pollutants; and

WHEREAS, the Tribal Council has been informed that a number of States have filed separate lawsuits in the United States Court of Appeals for the District of Columbia Circuit against EPA challenging EPA's proposal to institute a "cap and trade" mercury reduction rule (State of New Jersey et al v Environmental Protection Agency, No. 05-11162) and its decision to de-list mercury as a hazardous air pollutant (State of New Jersey et al v. Environmental Protection Agency, No. 05-1097); and


WHEREAS, attorneys representing the States in that litigation believe that their efforts to require EPA to institute regulations for controlling mercury pollution commensurate with the known health and environmental effects associated with mercury's status as a toxic air pollutant can be enhanced by specific factual and legal arguments concerning the impact EPA's proposed regulations have on Indian tribal governments, Tribal citizens and treaty-reserved resources; and

WHEREAS, the Tribal Council believes it is necessary and appropriate for the Band to support that effort.

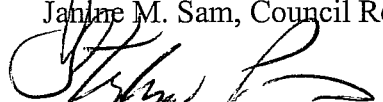
NOW THEREFORE BE IT RESOLVED THAT the Tribal Council of the Little River Band of Ottawa Indians hereby supports the drafting and submission of a motion to intervene in that litigation on behalf of the Little River Band and other similarly situated Tribes.

CERTIFICATE OF ADOPTION

I do hereby certify that the foregoing resolution was duly presented and adopted by the Tribal Council with 7 FOR, 0 AGAINST, 0 ABSTAINING, 1 ABSENT, and 1 VACANT, at a Regular Closed Session of the Little River Band of Ottawa Indians Tribal Council held on August 10, 2005, at the Little River Band's Conference Room in Manistee, Michigan, with a quorum being present for such vote.



Janine M. Sam, Council Recorder



Stephen Parsons, Council Speaker

Attest: