

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION**

Oneida Nation,

Plaintiff,

v.

Case No. 16-CV-1217

Village of Hobart, Wisconsin,

Defendant.

**UNITED STATES' NOTIFICATION OF POTENTIAL *AMICUS CURIAE*
PARTICIPATION AND MOTION TO FILE ANY *AMICUS CURIAE* BRIEF BY
OCTOBER 12, 2018**

The United States hereby notifies the Court of its potential *amicus curiae* participation in this proceeding and respectfully requests that the Court permit the United States until October 12, 2018, to determine whether to participate as *amicus curiae* and to prepare and submit any brief regarding the parties' motions for summary judgment. The United States has conferred with counsel for Plaintiff and Defendant. Plaintiff consents to this filing. Defendant does not consent to this filing.

As support for this motion, the United States asserts the following:

This action arises out of a dispute over the application of a Village of Hobart ("Village") special events ordinance to the Oneida Nation ("Nation")¹ for activities related to the Nation's 2016 Big Apple Fest. The Nation filed suit to enjoin the Village from enforcing the ordinance. First Am. Compl. ¶ 1 (Doc. 10) (filed Sept. 26, 2016). The Village brought counterclaims and asserted affirmative defenses, including an allegation that the Treaty of February 3, 1838, 7 Stat. 566, to which the United States is a party, did not establish a reservation for the Nation, and that even if there had once been a reservation, it was either subsequently diminished or disestablished, and therefore is subject to the Village's jurisdiction. See Defs.

¹ The Nation is a federally recognized tribe that maintains a government-to-government relationship with the United States. 83 Fed. Reg. 4235, 4238 (Jan. 30, 2018).

Mem. in Supp. of Mot. for Summ. J. at 1–4 (Doc. 94) (filed Jul. 19, 2018).

The United States has a substantial interest in the interpretation of federal treaties, statutes, and agency determinations regarding Indian interests. “The Constitution vests the Federal Government with exclusive authority over relations with Indian tribes.” *Montana v. Blackfeet Tribe*, 471 U.S. 759, 764 (1985). The Supreme Court has long-recognized the general trustee relationship between the Government and tribal nations. *United States v. Mitchell*, 463 U.S. 206, 225 (1983); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 556–57 (1832). Moreover, as a party to the 1838 Treaty, the United States’ view and construction of its terms can shed light on its meaning. *See Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 196 (1999) (declaring that in interpreting treaties, courts look to the “larger context that frames the Treaty,” including “the history of the treaty, the negotiations, and the practical construction adopted by the parties”) (internal quotations omitted).

Because of its special relationship with Indian Tribes, the United States has a strong interest in protecting the integrity of reservation boundaries and promoting tribal self-government within those boundaries. *See Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 327–28 (2008) (Tribal sovereignty “centers on the land held by the tribe and on tribal members within the reservation”); *Montana v. United States*, 450 U.S. 544, 565 (1981) (recognizing tribes’ inherent sovereign power to exercise certain forms of jurisdiction over non-Indians “on their reservations, even on non-Indian fee lands”). In addition, the United States exercises unique governmental authority within Indian country, including, in managing trust lands and natural resources and in federal environmental permitting on reservations. In the case of the Nation for example, the United States has approved requests to acquire trust land on the reservation, *see, e.g., Dillenburg v. Midwest Reg’l Dir.*, 63 IBIA 56 (May 11, 2016).² Information regarding the federal government’s treatment of the Nation’s reservation may provide some information regarding the questions before the Court that have been raised by the parties. *See Solem v. Bartlett*, 465 U.S. 463, 471 (1984).

² Copies of this and other decisions of the Interior Board of Indian Appeals are available at <https://www.doi.gov/oha/organization/ibia/findingIBIA>. As of 2013, title to 148 parcels of land in the Village of Hobart, comprising about 1,400 acres, was held by the United States in trust for the Nation. *See Oneida Tribe of Indians of Wis. v. Village of Hobart, Wis.*, 732 F.3d 837, 838 (7th Cir. 2013).

Briefing on the parties' motions for summary judgment is scheduled to close on September 28, 2018. The United States proposes to file any brief within fourteen (14) days after that date, and does not oppose any proposals by the parties to file a response to any United States brief within a reasonable timeframe thereafter. To date the parties have filed over 200 pages of briefing on the summary judgment motions, supported by hundreds of pages of expert reports. No date has been set for oral argument. As a result, we do not anticipate that the filing of any United States brief by the date requested would unduly delay the proceedings.

For these reasons, the United States respectfully requests that the Court grant until October 12, 2018, for the United States to determine whether to participate as *amicus curiae* and file any brief regarding the parties' motions for summary judgment. If the United States determines not to participate as *amicus curiae*, it will notify the Court accordingly.

Dated: September 24, 2018

Respectfully submitted,

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