

IN THE UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA

THE NEZ PERCE TRIBE, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 06cv02239-JR
)	
DIRK KEMPTHORNE,)	
Secretary of the Interior, <u>et al.</u> ,)	
)	
Defendants.)	
_____)	

**DEFENDANTS’ UNOPPOSED SECOND MOTION FOR ENLARGEMENT
OF TIME WITHIN WHICH TO PARTIALLY OPPOSE OR OTHERWISE RESPOND
TO PLAINTIFFS’ MOTION FOR LEAVE TO SEND COURT-APPROVED NOTICE**

Pursuant to Rule 6 of the Federal Rules of Civil Procedure and Local Civil Rule 7, Defendants respectfully move for an enlargement of time, to and including September 16, 2008, within which to oppose or otherwise respond to Plaintiffs’ motion for leave for Plaintiffs’ Counsel to Send Court-Approved Notice (“Plaintiffs’ Motion”). Defendants’ opposition or response is presently due September 9, 2008. This motion is Defendants’ second such motion.

The grounds for this motion are as follows:

1. Plaintiffs’ Motion was filed on August 8, 2008. Pursuant to this Court’s order dated August 26, 2008 (the “Order”) (Dkt. 75), Defendants’ time to oppose or otherwise respond to Plaintiffs’ Motion was enlarged to and including September 9, 2008. The Order also provided in relevant part that Defendants’ “counsel should take notice that the Court expects to approve the idea of sending notice and to focus their response on what the notice should say.”

2. In light of the Order, Defendants engaged in discussions with Plaintiffs’ counsel to determine whether they could reach an agreement as to the language of any proposed notice and to determine whether they could fully resolve Plaintiffs’ Motion. As set forth in their joint filing of

September 9, 2009 (Dkt. 76), the parties have agreed on the form and content of a proposed notice. The parties also noted in their joint filing, that they could not reach an agreement on Plaintiffs' request that the Court refrain from ruling on Plaintiffs' class certification motion until sixty days after distribution of the proposed notice. Accordingly, because this one issue remains outstanding, Defendants hereby request an additional seven days to submit briefing on whether the Court should grant Plaintiffs' request to delay a class certification ruling.

3. Counsel for Defendants submit that they intend to oppose Plaintiffs' request and need the additional time to prepare their partial opposition to Plaintiffs' Motion. Pursuant to Local Civil Rule 7, undersigned Defendants' counsel contacted Plaintiffs' counsel, Melody McCoy, on September 9, 2008. Ms. McCoy advised Defendants' counsel that Plaintiffs do not object to Defendants' request for additional time to and including September 16, 2008 to file their partial opposition or to otherwise respond to Plaintiffs' Motion.

WHEREFORE, Defendants respectfully request that their motion for enlargement of time be GRANTED and that the Court allow Defendants to and including September 9, 2008 to file their opposition or response to Plaintiffs' Motion.

Respectfully submitted this 9th day of September, 2008,

RONALD J. TENPAS
Assistant Attorney General

/s/ Michael D. Thorp
MICHAEL D. THORP
E. KENNETH STEGEBY, D.C. 474127
MAUREEN E. RUDOLPH
ANTHONY P. HOANG, FL Bar #798193
United States Department of Justice
Environment and Natural Resources
Division
Natural Resources Section

P.O. Box 663
Washington, D.C. 20044-0663
Tel: (202) 305-0456
Tel: (202) 616-4119
Tel: (202) 305-0479
Tel: (202) 305-0241
Fax: (202) 353-2021

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing DEFENDANTS' UNOPPOSED SECOND MOTION FOR ENLARGEMENT OF TIME WITHIN WHICH TO PARTIALLY OPPOSE OR OTHERWISE RESPOND TO PLAINTIFFS' MOTION FOR LEAVE TO SEND COURT-APPROVED NOTICE was served on September 9, 2008 by Electronic Case Filing, unless otherwise noted below, on the following counsel:

Melody McCoy
Donald R. Wharton
David R. Over
John E. Echohawk
Native American Rights Fund
1506 Broadway
Boulder, CO 80302

/s/ Michael D. Thorp

MICHAEL D. THORP