

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.	)	
_____	)	

**PARTIES’ JOINT STIPULATION AS TO [PROPOSED]  
NOTICE TO THE PUTATIVE CLASS**

WHEREAS, on August 8, 2008, Plaintiffs filed their Motion For Leave For Plaintiffs’ Counsel To Send Court-Approved Notice To Members Of The Putative Class (“Plaintiffs’ Motion”) (Dkt. 73);

WHEREAS, Defendants identified certain grounds for objecting to Plaintiffs’ Motion;

WHEREAS, on August 22, 2008, Defendants moved for an extension of time to oppose or otherwise respond to Plaintiffs’ Motion (Dkt. 74);

WHEREAS, on August 26, 2008, the Court issued an Order (Dkt. 75) granting Defendants’ motion for an extension of time to and including September 9, 2008. The Order further stated that Defendants’ “counsel should take notice that the Court expects to approve the idea of sending notice and focus their response on what the notice should say.”;

WHEREAS, in light of the Court's August 26, 2008 Order, counsel for Plaintiffs and Defendants have held several discussions in an effort to agree on the form and content of a proposed notice to the putative class to submit to the Court for approval;

WHEREAS, as set forth below and in Attachment 1 hereto, Plaintiffs and Defendants have agreed upon the form and content of a proposed notice to be sent to the putative class, but, as explained briefly below, they have been unable to agree on one related issue regarding the impact, if any, of the Notice on when the Court should rule on the pending class certification motion;

WHEREAS, as set forth in Plaintiffs' Proposed Order submitted with Plaintiffs' Motion, Plaintiffs believe putative class members should have a reasonable time after Notice is given to respond to the Notice before a ruling on class certification.

WHEREAS, Defendants disagree and do not believe the statute of limitations should be further extended, and have by unopposed motion moved for an extension of time in which to fully brief the issue; and.

WHEREAS, the Parties' Proposed Notice To Putative Class Members (the Parties' Proposed Notice") is appended hereto as Attachment 1.

NOW, THEREFORE, the parties hereby stipulate and agree to the following:

1. The parties hereby respectfully request that the Court approve the Parties' Proposed Notice, that Plaintiffs' counsel be authorized to send the Parties' Proposed Notice to the putative class members, and following completed briefing on Plaintiffs' Motion, decide the issue as to whether the Court's Order on Plaintiffs' Motion should address the issue regarding when the Court will decide the class certification motion in light of the Notice.

2. Plaintiffs shall bear all costs for sending the Parties' Proposed Notice to the putative class members.

WHEREFORE, the parties jointly and respectfully request that the Court approve of and enter the [Proposed] Notice.

Respectfully submitted this 9th day of September, 2008,

*pursuant to written authorization (9/9/08)*

/s/ Melody L. McCoy by /s/ Michael D. Thorp

MELODY L. McCOY  
DONALD R. WHARTON  
DAVID L. GOVER  
DAWN S. BAUM  
MARK C. TILDEN  
JOHN ECHOHAWK  
WALTER R. ECHO-HAWK, JR.  
Native American Rights Fund  
1506 Broadway  
Boulder, CO 80302  
Tel: (303) 447-8760  
Fax: (303) 443-7776

Attorneys for Plaintiffs

RONALD J. TENPAS  
Assistant Attorney General

/s/ Michael D. Thorp

MICHAEL D. THORP  
MAUREEN E. RUDOLPH  
E. KENNETH STEGEBY  
ANTHONY P. HOANG  
United States Department of Justice  
Environment and Natural Resources Division  
Natural Resources Section  
Washington, D.C. 20044-0663  
Tel: (202) 305-0456  
Tel: (202) 305-0479  
Tel: (202) 616-4119  
Tel: (202) 305-0241  
Fax: (202) 353-2021

Attorneys for Defendants

OF COUNSEL:

PAUL SMYTH  
ELISABETH C. BRANDON  
MICHAEL BIANCO  
THOMAS BARTMAN  
Office of the Solicitor  
United States Department of the Interior  
Washington, D.C. 20240

TERESA DAWSON  
Office of the Chief Counsel  
Financial Management Service  
United States Department of the Treasury  
Washington, D.C. 20227

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing PARTIES' JOINT STIPULATION REGARDING BRIEFING SCHEDULE ON PLAINTIFFS' MOTION FOR CLASS ACTION CERTIFICATION AND CLASS NOTICE APPROVAL, AND [PROPOSED] ORDER was served on September 9, 2008 by Electronic Case Filing or by regular, first-class United States mail, postage pre-paid, and by electronic mail or telefax, unless otherwise noted below, on the following counsel:

MARK C. TILDEN  
DAWN STURDEVANT BAUM  
MELODY L. McCOY  
DAVID R. GOVER  
JOHN E. ECHOHAWK  
WALTER R. ECHO-HAWK, JR.  
Native American Rights Fund  
1506 Broadway  
Boulder, CO 80302  
Fax: (303) 443-7776

/s/ Michael D. Thorp  
MICHAEL D. THORP