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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

PAIUTE-SHOSHONE INDIANS OF THE
BISHOP COMMUNITY OF THE BISHOP
COLONY, CALIFORNIA, a federally
recognized Indian tribe,

Plaintiff,

v.

CITY OF LOS ANGELES, a California
municipal corporation,

Defendant.

1:06-cv-00736 OWW GSA

MEMORANDUM DECISION DENYING AS
MOOT REQUEST TO LIFT STAY AND
GRANTING LEAVE TO AMEND (DOC.
100)

I. INTRODUCTION

Plaintiff, the Paiute-Shoshone Indians of the Bishop
Community of The Bishop Colony, California (the "Tribe"), moves
to "lift [the] administrative stay" and for an order setting a
deadline for filing an amended complaint. Doc. 100. Defendant,
the City of Los Angeles ("the City") opposes. Doc. 101.
Plaintiff replied. Doc. 102. The motion was originally
calendared for July 25, 2011, but the hearing was vacated after
the parties stipulated to have the matter decided on the papers.
Doc. 103.

II. ANALYSIS

On June 12, 2006, the Tribe brought a suit in ejectment to
reclaim land in the Owens Valley that was transferred in 1941 by
agents of the United States (purportedly acting in the name of

1 the Tribe) to the City. The Tribe alleged, generally, that the
2 conditions imposed by Congress on this transfer had not been not
3 satisfied, rendering the purported transfer null and void. The
4 City's motion to dismiss was granted on the ground that the
5 United States is an indispensable party that cannot be joined
6 under Federal Rule of Civil Procedure 19. Doc. 73 ("Rule 19
7 Dismissal"). Plaintiff was granted 30 days from February 15,
8 2007 within which to file an amended complaint. *Id.* at 48.

10 On March 20, 2007, Plaintiff filed a "stipulated motion" for
11 extension of time in which to file an amended complaint.
12 Plaintiff specifically requested an extension until 30 days after
13 the Court ruled on "plaintiff's pending motion to amend [to allow
14 an interlocutory appeal] and for a stay of proceedings." Doc.
15 76. That request was granted. Doc. 77.

17 On July 30, 2007, the district court granted Plaintiff's
18 request for certification of an interlocutory appeal. Doc. 83,
19 dated July 30, 2007. Because that decision did not specifically
20 mention the imposition of a stay pending the appeal, the City
21 asserts that the time for filing of an appeal lapsed 30 days
22 later, on August 30, 2007.

24 Under the governing statute, 28 U.S.C. § 1292, once the
25 district court issues a written order determining that an
26 interlocutory appeal is appropriate, a plaintiff has ten days to
27 apply to the Court of Appeals for permission to take the appeal.

1 § 1292(b). The statute specifically provides that application to
2 the Court of Appeals for permission to take an interlocutory
3 appeal "shall not stay proceedings in the district court unless
4 the district judge or the Court of Appeals or a judge thereof
5 shall so order." *Id.*

6
7 The City asserts that a stay while an interlocutory appeal
8 is pending is "rarely, if ever, appropriate under any
9 circumstances," citing *Fisons Limited v. United States*, 458 F.2d
10 1241, 1248 n.16 (7th Cir. 1972). This forty-year-old case from
11 another Circuit is not persuasive. There is more recent
12 authority to the contrary:

13 [A district] court has authority to stay this case
14 pending an interlocutory appeal since section 1292(b)
15 states: "[A]pplication for an appeal hereunder shall
16 not stay proceedings in the district court unless the
17 district judge or the Court of Appeals or a judge
18 thereof shall so order." Here, resolution of the issue
19 [on which the interlocutory appeal has been taken]
20 "would alter the direction of the current proceedings
21" *Assoc. of Irrigated Residents v. Fred Schakel*
22 *Dairy*, 634 F. Supp. 2d at 1092-93 (staying proceedings
pending interlocutory appeal of order denying motion to
dismiss Clean Air Act claim). Since three of
Plaintiff's four claims against [defendant] are based
upon [appealed issue], "[i]t would be a waste of
judicial and party resources to proceed with [these]
claims while the appeal is pending." *Id.*...

23 *Lakeland Village Homeowners Ass'n v. Great Am. Ins. Group.*, 727
24 F. Supp. 2d 887, 897 (E.D. Cal. 2010). Here, like in *Lakeland*,
25 the thrust of Plaintiff's complaint involved claims tied up in
26 the interlocutory appeal. It would have been appropriate at the
27

1 time the interlocutory appeal was certified to stay the case
2 pending resolution of the appeal.

3 The problem is that no such stay was ever entered.
4 Plaintiff did request, if the interlocutory appeal was certified,
5 that the deadline for filing an amended complaint be stayed until
6 thirty days following resolution of the interlocutory appeal.
7 Doc. 75-1 at 12. However, the order granting certification did
8 not impose a stay, and Plaintiff did not move to correct this
9 inadvertent omission. The deadline for the filing of an amended
10 complaint passed while the appeal was pending.
11

12 Nevertheless, even though Plaintiff missed the deadline for
13 filing an amended complaint, a court should "freely give leave
14 when justice so requires." Fed. R. Civ. P. 15(a)(2). Where, as
15 here, a party has not had an opportunity to amend its original
16 complaint, leave "generally shall be denied only upon a showing
17 of bad faith, undue delay, futility, or undue prejudice to the
18 opposing party." *Chudacoff v. Univ. Med. Ctr. of S. Nev.*, ---
19 F.3d ---, 2011 WL 2276774, *6 (9th Cir. Jun. 9, 2011). The City
20 does not assert bad faith, undue delay, or undue prejudice.
21

22 The City does argue that amendment of the complaint would be
23 futile. Doc. 101 at 4-6. The City maintains that because the
24 Rule 19 Dismissal found that the claims in the original complaint
25 could not proceed without the United States, which could not be
26 joined, "any amendment to the complaint which omits the federal
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1 government's involvement and seeks to proceed solely against the
2 City in connection with the 1937 land transfer would be
3 insufficient and futile." *Id.* at 5. This might be a valid basis
4 for a finding of futility if Plaintiff had indicated its intent
5 to re-file a claim based on ejectment or a related cause of
6 action. To the contrary, Plaintiff asserts in its reply that it
7 has other claims against the United States, including allegations
8 that the federal government failed to manage trust assets for the
9 benefit of the Tribe. Such claims are not obviously futile.
10

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12 III. CONCLUSION

13 For the reasons set forth above, Plaintiff's motion to lift
14 the administrative stay is DENIED AS MOOT, as no such stay was
15 ever entered. Nevertheless, Plaintiff is granted leave to amend
16 the complaint within thirty (30) days of electronic service of
17 this memorandum decision.

18 Due to the pending retirement of the assigned district
19 judge, the parties will shortly receive notice of reassignment of
20 this case. That notice shall not alter the deadline for the
21 filing of the amended complaint.
22

23
24 SO ORDERED

25 Dated: September 19, 2011

26 /s/ Oliver W. Wanger
27 United States District Judge
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