

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

EDWIN S. MOORE, JR., *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 UNITED STATES OF AMERICA,)
 DEPARTMENT OF THE INTERIOR,)
 BUREAU OF INDIAN AFFAIRS,)
)
 Defendant.)
)
 and)
)
 UNITED STATES OF AMERICA,)
 DEPARTMENT OF THE INTERIOR)
 BUREAU OF INDIAN AFFAIRS,)
)
 Third Party Plaintiff,)
)
 v.)
)
 MUSCOGEE (CREEK) NATION,)
)
 Third Party Defendant.)

Case No. 08-CV-306-GKF-FHM

OPINION AND ORDER

This matter comes before the court on the United States’ Motion for Stay of Proceedings to Allow Administrative Remedy [Doc. No. 49]. The United States seeks a stay in order to allow it to pursue administrative recovery from the third party defendant, Muscogee (Creek) Nation (the “Nation”) on behalf of plaintiffs as contemplated by 25 C.F.R. Part 162, 163, 166. Plaintiffs object to the motion on the grounds that they are not willing to agree to an indefinite stay. [Doc. No. 52]. The Nation does not object to the motion.

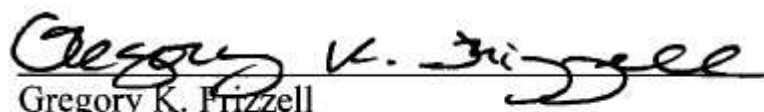
This action arises from the alleged wrongful destruction of soil, trees, timber, forest products, rock, vegetation and water located on property held by the Bureau of Indian Affairs in

trust for individual plaintiff Indians. Plaintiffs allege that on or about June 17, 2006, they discovered agents of the Muscogee (Creek) Nation Roads Program had trespassed on the property and damaged it in connection with road work. [Doc. No. 18, Second Amended Complaint, ¶¶1-4].

Under 28 U.S.C. §2415, the Department of the Interior has six years within which to bring such claims on behalf of individual proceedings, and members of Indian tribes, similarly, have six years within which to bring breach of trust claims against the United States. 28 U.S.C. §2401(a). The court finds that a stay of this action is appropriate in order to allow the United States to pursue an administrative claim proceeding. However, the court is cognizant of the plaintiffs' concern about whether the DOI will proceed in a timely manner.

Defendant's Motion to Stay [Doc. No. 49] is granted. This matter is stayed until December 31, 2009. The parties are to file a joint status report on or before December 15, 2009, advising the court of the status of the administrative claim proceeding, so that the court will be in a position to evaluate whether the stay should be continued beyond year-end. The granting of defendant's Motion to Stay moots the Motion to Stay Discovery [Doc. No. 53]; the Motion to Expedite Ruling [Doc. No. 60]; the Motion for Hearing In Person [Doc. No. 61]; the Motion to Strike Count III of Plaintiffs' Second Amended Complaint and Motion to Limit Availability of Damages [Doc. Nos. 72, 79]; the Motion to Strike Count V of Plaintiffs' Second Amended Complaint [Doc. No. 73]; the Motion to Dismiss Count IV of Plaintiff's Second Amended Complaint and Plaintiff Louise Beaver's Second Amended Complaint [Doc. No. 74]; the Motion to Dismiss for Lack of Jurisdiction of the Muscogee Creek Nation [Doc. No. 75]; the Motion to Dismiss and Motion to Stay [Doc. No. 76]; the Motion in Limine [Doc. No. 77], and Motion for Partial Summary Judgment of Plaintiffs [Doc. No. 78].

ENTERED this 28th day of August, 2009.

A handwritten signature in black ink that reads "Gregory K. Frizzell". The signature is written in a cursive style with a horizontal line underneath the name.

Gregory K. Frizzell
United States District Judge
Northern District of Oklahoma