

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

FMC CORPORATION

Plaintiff,

v.

SHOSHONE-BANNOCK TRIBES,

Defendant.

Case No. 4:14-CV-489-BLW

CASE MANAGEMENT ORDER

In accordance with the partial agreement reached by counsel, and to resolve those areas of disagreement, the Court issues the following Case Management Order:

NOW THEREFORE IT IS HEREBY ORDERED that the following recitation of deadlines and procedures shall govern this litigation:

1. Tribal Record: The Tribes shall submit and file the Tribal Court record with the Court on or before May 10, 2016 (“Record Submission Deadline”). The parties will advise the Court if additional time is needed for the initial submission due to unexpected technical issues or other reasons. FMC shall have an opportunity to file an objection to any portion or all of the Tribal Court record, provided it files its objection no later than 30 days after the Tribes file the Tribal Court record. The Tribes shall have an opportunity to respond to FMC’s objection, provided it files its response no later than 30 days after FMC files its objection.

2. Dispositive Motion Deadline: The parties will file any dispositive motions on or before the later of: (1) **July 1, 2016**, or (2) thirty (30) days after any Court decision resolving objections to the Tribal Court record. The Court approves the Tribes filing three dispositive motions on three separate issues.

3. Briefs and Page Limits: The parties will endeavor to file their Opening Brief(s) and dispositive motions on the same date, but shall not be required to do so.

Assuming that they do so, each of the parties will then simultaneously submit a Response Brief responding to the other party’s Opening Brief. The parties will then simultaneously file a Reply Brief supporting their Opening Brief. Due to the existence of an evidentiary record and rulings from the Tribal Court proceedings, this case necessarily involves more extensive briefing and record review. For these reasons, Opening Briefs and briefs in support of dispositive motions shall be no longer than thirty-five (35) pages, and a single Statement of Facts shall be no longer than sixty (60) pages. The Response Briefs will have the same page limit as

the Opening Briefs. Reply Briefs will be one-half of the Opening Brief page limit.

4.Due Date for Response Briefs and Reply Briefs: Response Briefs shall be filed 45 days after the Opening Brief Deadline. Reply Briefs shall be filed 21 days after the Response Brief is due.

5.Hyperlinked Briefs. One purpose of submitting the Tribal Court record electronically is to facilitate submission of briefs by using hyperlinks to relevant legal authority and to the record. The parties plan to submit briefs in written form, and also to provide the Court an electronic copy of the briefs with hyperlinks to accompanying cases, authorities, and Tribal Court record documents. These documents will be provided using Adobe Acrobat (.pdf).

6. Excerpts of Record. Within fourteen (14) days following the completion of briefing, each of the parties may submit to the Court an Excerpts of Record, containing a compiled index of the documents and authorities cited in their briefs, with all of the cited documents, with the index hyperlinked to the documents cited. If a party submits an Excerpts of Record, each party will file the written index to the Excerpts of Record on the CM/ECF filing system.

7.Additional Mediation Sessions: In order to accommodate additional mediation sessions or work toward alternative dispute resolution, the parties may by mutual agreement file a joint notice of extension of case management schedule to move the Opening Brief Deadline to September 1, 2016 (except if resolution of objections to the Tribal Court record otherwise extends the Opening Brief Deadline). If additional assistance with scheduling is needed to assist with

mediation, the parties may jointly contact the Court clerk to arrange for a conference with the Court.

8. Amendment of Pleadings and Joinder of Parties: All motions to amend pleadings and join parties, except for allegations of punitive damages, shall be filed on or before **May 10, 2016**. This deadline shall only be extended for good cause shown.² All parties are entitled to know the claims and parties well-before trial rather than be forced to pursue or defend against a moving target. Although this deadline precedes the general discovery deadline, the parties are directed to send out all discovery requests that might relate to amendment or joinder enough in advance of this amendment and joinder deadline to obtain the responses needed to make an informed decision on amendment and joinder.
9. Law Clerk: If counsel has a procedural or legal question that needs to be brought to my attention, please contact Dave Metcalf, the law clerk assigned to this case at dave_metcalf@id.uscourts.gov or (208) 334-9025.
11. Calendaring Clerk: With regard to any scheduling matters or calendar issues, please contact my deputy clerk, Jamie Bracke at (208) 334-9021.
12. Docketing Clerk: If you have a docketing question, please contact a docket clerk at (208) 334-1361.

² The Ninth Circuit has held that motions to amend filed after the Scheduling Order deadline are governed, not by the liberal provisions of Fed. R. Civ. P. 15(a), but instead, by the more restrictive provisions of Fed. R. Civ. P. 16(b) requiring a showing of “good cause.” *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604 (9th Cir. 1992).



DATED: April 5, 2016

B. Lynn Winmill

B. Lynn Winmill

Chief Judge

United States District Court