

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

KICKAPOO TRIBE OF INDIANS OF THE	)	
KICKAPOO RESERVATION IN KANSAS,	)	
	)	
Plaintiff,	)	
vs.	)	Case No. 06-CV-2248-CM-TJJ
	)	
NEMAHA BROWN WATERSHED JOINT	)	
DISTRICT NO. 7, et al.,	)	
	)	
Defendants.	)	

**ORDER CONTINUING STAY OF PROCEEDINGS**

This matter is before the Court on two contemporaneously filed motions. The first is the Motion of the Kickapoo Tribe in Kansas, the United States Department of the Interior, and the State of Kansas Department of Agriculture to Extend Stay of Litigation (ECF No. 306). The second is Kickapoo Tribe in Kansas’ Motion for Leave to File Third Amended Complaint (ECF No. 308). Both motions are unopposed. Because the parties have established that an extension of the current stay is appropriate and the Court has determined that Plaintiff Kickapoo Tribe in Kansas should be granted leave to file its Third Amended Complaint, the Court concludes that both motions should be granted.

**Motion to Continue Stay**

The Court stated in its last Order Staying Proceedings (ECF No. 305) that the purpose of continuing the stay was to allow the parties to prepare to negotiate and to negotiate a resolution of Plaintiff’s remaining claims.<sup>1</sup> To that end, the Court encouraged the parties to begin and attempt to conclude a negotiated settlement before the stay was set to expire on May 14, 2014, and directed Plaintiff to act by that same date if it determined a need to seek to amend its

<sup>1</sup> ECF No. 305 at 1.

pleadings.<sup>2</sup> The Court also advised the parties how they should be prepared to support a further request for stay if they were to seek one. The instant motion constitutes just such a request, and the parties have shown good cause for an extension of the stay. The parties have communicated more than two dozen times by telephone and email and are circulating and updating drafts of settlement documents which address the reserved water right and its administration. Moreover, the parties have committed to a regular schedule of continuing discussions and negotiations.

### **Motion to Amend**

Plaintiff seeks leave to amend its complaint for the purpose of (1) conforming the factual allegations to the claims remaining after the Court granted Nemaha Brown Watershed Joint District No.7's motion for summary judgment;<sup>3</sup> and (2) dropping Nemaha Brown as a defendant in this lawsuit. Since the time of filing, the presiding District Judge has entered an order of dismissal and Nemaha Brown is no longer a party to the case.<sup>4</sup> Defendant David Barfield (in his official capacity as Chief Engineer for the Kansas Division of Water Resources) ("State Defendant") does not oppose the motion. Defendant Michael Black (in his official capacity as Associate Deputy Secretary, Bureau of Indian Affairs, United States Department of the Interior) ("Federal Defendant") consents to the motion but asks the Court to stay his deadline to answer or otherwise respond to the Third Amended Complaint without waiving any affirmative defenses he may assert.<sup>5</sup>

---

<sup>2</sup> *Id.* at 1-2.

<sup>3</sup> ECF No. 301.

<sup>4</sup> ECF No. 310.

<sup>5</sup> ECF No. 311.

In ruling on a motion for leave to amend, the court “should freely give leave when justice so requires.”<sup>6</sup> The Court finds that leave to amend should be granted, and that the deadline for Federal Defendant to answer or otherwise respond to the Third Amended Complaint should be stayed.

**IT IS THEREFORE ORDERED** that the Motion of the Kickapoo Tribe in Kansas, the United States Department of the Interior, and the State of Kansas Department of Agriculture to Extend Stay of Litigation (ECF No. 306) is hereby granted. The previously entered stay of these proceedings is extended to **November 10, 2014**, at which time the stay shall automatically be lifted and the Court will proceed with setting a pretrial scheduling conference to determine future deadlines and dates in the action pursuant to Fed. R. Civ. P. 16.

**IT IS FURTHER ORDERED** that the parties shall submit a status report to the Court on **August 12, 2014** and on **November 10, 2014**.

**IT IS FURTHER ORDERED** that any motion for an additional extension of the stay beyond November 10, 2014 shall be supported by the filing of a memorandum in support as directed by the Court in its Order Staying Proceedings dated February 25, 2014 (ECF No. 305).

**IT IS FURTHER ORDERED** that the Kickapoo Tribe in Kansas’ Motion for Leave to File Third Amended Complaint (ECF No. 308) is granted. In accordance with D. Kan. Rule 15.1(b), Plaintiff shall electronically file and serve its Third Amended Complaint within fourteen (14) days of the date of this Order.

**IT IS FURTHER ORDERED** that the deadline for Defendant Michael Black, in his official capacity as Associate Deputy Secretary, Bureau of Indian Affairs, United States Department of the Interior, to answer or otherwise respond to the Third Amended Complaint is

---

<sup>6</sup> Fed. R. Civ. P. 15(a)(2).

stayed until 60 days after November 10, 2014, and that any jurisdictional or other applicable affirmative defenses he may assert are not waived in the interim.

**IT IS SO ORDERED.**

Dated in Kansas City, Kansas on this 22nd day of July, 2014.

s/ Teresa J. James  
Teresa J. James  
United States Magistrate Judge