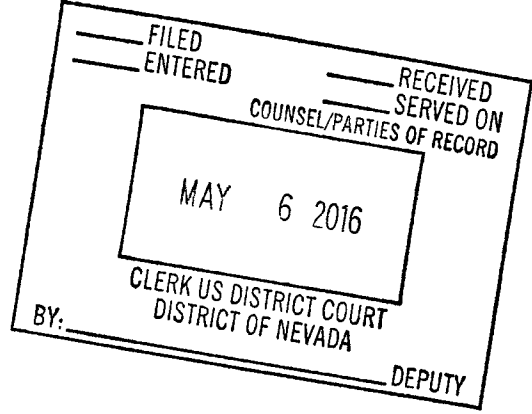


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9 UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA

11 KMI ZEOLITE, INC.; and ROBERT E.
FORD,

12 Plaintiffs,

13 v.

14 UNITED STATES DEPT. OF THE
INTERIOR; *et al.*,

15 Defendants.

ORDER

Case No.: 2:15-cv-2038-MMD-VCF

17 UNITED STATES DEPT. OF THE
18 INTERIOR,

19 Counterclaimant,

20 v.

21 KMI ZEOLITE, INC.; ROBERT E. FORD;
22 and R.A.M.M. CORP.,

23 Counterclaim Defendants.

24 JOINT MOTION TO AMEND SCHEDULING ORDER

25 The parties, by their undersigned attorneys, request the Court to amend the Scheduling Order
26 in this matter to allow time for the parties to conduct mediation and potentially achieve a settlement
27 of this matter.
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MEMORANDUM OF POINTS AND AUTHORITIES

Introduction

These consolidated lawsuits are (1) an action under the Administrative Procedure Act (APA) seeking review of a decision by the federal Interior Board of Land Appeals (IBLA), finding that the plaintiffs in this case, KMI Zeolite, Inc. (KMI) and Robert Ford (Ford), and Counterclaim Defendant R.A.M.M. Corp. (RAMM), committed trespass on the public lands in connection with the operation of a milling site on private land; and (2) an action to quiet title to the private millsite which was used in connection with the trespasses allegedly involved in this lawsuit.

In the Scheduling Order previously entered in this case (#26), the Court determined that administrative review issues should be resolved first, because those issues are resolved solely by reviewing the administrative record prepared by the agency. The APA portion of the case requires no discovery, because APA review occurs solely on the administrative record developed by the agency. *Building Indus. Ass'n of the Bay Area v. U.S. Dept. of Commerce*, 792 F.3d 1027, 1032 (9th Cir. 2015). The Scheduling Order set briefing for the APA issues to begin on April 11, 2016 and conclude on June 10, 2016, with fact and expert discovery on the remaining issues, if any, to follow after the order resolving the APA issues. (#26.)

The parties¹ have determined in good faith that there is a substantial chance that these consolidated matters can be resolved through mediation. As a result, the parties wish to avoid the expense of litigation while they conduct that mediation. Scheduling the mediation will require lead time because most qualified mediators' schedules are booked well in advance. As a result, the parties request that all deadlines in this matter be extended by 90 days, to permit a full opportunity to conduct settlement discussions with a mediator. The parties therefore jointly propose the following schedule:

¹ Galtar, Inc., which is a defendant in the consolidated *ABC Recycling* case, does not join in this motion because it has filed a motion to dismiss that action which is pending.

PROPOSED SCHEDULING ORDER

The Parties propose the following schedule and related deadlines:

1. Briefing on the APA issues in the *KMI Zeolite* case shall be as follows:

Plaintiff's and Defendants' motions for summary judgment
and supporting briefs due: July 11, 2016

Briefs in response to motions for summary judgment due: August 10, 2016

Reply briefs in support of summary judgment due: Sept. 9, 2016

2. Initial Disclosures due: 30 days after order disposing of
APA issues in *KMI Zeolite*

3. Amendment of Pleadings due: 30 days after Initial Disclosures

4. Fact Discovery closes: 180 days after Initial Disclosures

5. Expert Discovery:

a. Last day to designate Plaintiffs' experts: 30 days after fact discovery close

b. Last day to designate Defendant's experts: 60 days after fact discovery close

c. Last day to designate rebuttal experts: 90 days after fact discovery close

c. Last day to complete expert discovery: 120 days after fact discovery
close

6. Dispositive Motions due: 30 days after expert discovery
close

7. Pre-Trial Order:

a. Last date to file if no dispositive motions are filed: 30 days after expert
discovery close

b. Last date to file if dispositive motions are filed: 30 days after order resolving
last dispositive motion

For the reasons set forth above, Plaintiff and Defendants respectfully and jointly request the
Court to enter its SCHEDULING ORDER in conformity with the dates proposed herein.

1 Dated: March 25, 2016

2 For the KMI Zeolite Plaintiffs:

3 /s/ Karen Budd-Falen

4 Karen Budd-Falen
5 300 E. 18th St.
6 P.O. Box 346
7 Cheyenne, WY 82003

8 For the ABC Recycling Plaintiffs:

9 /s/ Gregory Miles

10 Gregory A. Miles, Esq.
11 Royal & Miles, LLP
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14 For the Federal Defendants:

15 DANIEL G. BOGDEN
16 United States Attorney

17 /s/ Roger W. Wenthe

18 ROGER W. WENTHE
19 Assistant United States Attorney

20 For Counterclaim Defendant R.A.M.M. Corp.

21 /s/ Michael Stoberski

22 Michael E Stoberski
23 Olson, Cannon, Gormley, Angulo & Stoberski
24 9950 West Cheyenne Avenue
25 Las Vegas , NV 89129-

26 IT IS SO ORDERED.

27 Date: 5/6/16

28 
UNITED STATES MAGISTRATE JUDGE

CAM FERENBACH
U.S. MAGISTRATE JUDGE

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing document was served on the persons shown, by the method shown, on the date shown.

CM/ECF

All counsel of record

Dated: March 25, 2016

/s/ Roger W. Wenthe
ROGER W. WENTHE
Assistant United States Attorney

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