

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HOOPA VALLEY TRIBE, et al., )  
 )  
 Plaintiffs, )  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

Case No. 08-72 L  
Judge Thomas C. Wheeler

**MOTION TO STAY BRIEFING ON PLAINTIFFS' MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

Defendant hereby moves to stay briefing on the Hoopa Valley Tribe and Individual Hoopa Tribal Members' Motion for Partial Summary Judgment on Question of Breach of Trust Responsibility ("Plaintiffs' Motion"). Defendant's response to Plaintiffs' Motion is currently due May 5, 2008. In support of this motion, Defendant states as follows:

1. On February 1, 2008, Plaintiff filed its Complaint in this Court.
2. This Court granted Defendant's motion for an extension of time to answer or otherwise respond to Plaintiffs' Complaint, making Defendant's answer or other response due on June 2, 2008. If this motion is not granted, Defendant would be required to respond to Plaintiffs' Motion for partial summary judgment before it has filed an answer or otherwise responded in this case.
3. At this time, Defendant is considering whether to file a motion to bring the Yurok Tribe into the case. In addition, Defendant may raise jurisdictional issues in a motion to dismiss as its response to Plaintiffs' Complaint. Any issues regarding joinder or this Court's jurisdiction should be addressed before the Court considers Plaintiffs' Motion.
4. In addition, Defendant has not yet had an opportunity to fully develop its case.

Plaintiffs challenge Defendant's decision to distribute funds to the Yurok Tribe. Defendant notified Plaintiffs of its decision to do so in March 2007, and distributed the funds to the Yurok in April 2007. Plaintiffs waited until February 2008 to file their suit, but filed their motion so that Defendant's response is due even before its answer. Defendant needs additional time to consider not only the joinder and jurisdictional issues mentioned above, but also other issues, such as whether discovery might be necessary. At this time, Defendant does not have enough information to fully respond to Plaintiffs' Motion. It is likely that Defendant would file a cross-motion for summary judgment, but at this time, Defendant is unable to do so. Denying this motion, therefore, may cause the Court to address issues in a piecemeal or repetitive format and would impede judicial efficiency.

5. Further, the undersigned counsel is currently pregnant, with an anticipated due date of May 10, 2008. Time is needed to bring other counsel up to speed on the case. The attorney who will be covering the case during Ms. McCune's absence, Sara Costello, is preparing for trial in *Lavetta Elk v. United States*, Case No. 05-186 L (Fed. Cl.), which is scheduled to take place April 28 through May 2, 2008.

6. The undersigned counsel consulted with Mr. Thomas Schlosser, counsel for Plaintiffs, who stated that Plaintiffs oppose this motion.

7. Staying the briefing on Plaintiffs' Motion will not affect other scheduling at this time.

WHEREFORE, Defendant respectfully requests that this motion be GRANTED.

Submitted this 25th day of April, 2008.

RONALD J. TENPAS  
Assistant Attorney General

s/ Devon Lehman McCune  
Devon Lehman McCune, Trial Attorney  
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Office of the Solicitor

**CERTIFICATE OF SERVICE**

I hereby certify that on April 25, 2008, I filed the foregoing **MOTION TO STAY BRIEFING ON PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties in this matter.

DATED this 25th day of April, 2008.

s/ Devon Lehman McCune  
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