

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

WILLIAM S. FLETCHER, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 02-CV-427-GKF-PJC
)	
THE UNITED STATES OF AMERICA,)	
et al.,)	
)	
Federal Defendants.)	

**FEDERAL DEFENDANTS' RULE 59(e) MOTION
TO ALTER OR AMEND THE JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 59(e), the United States of America, the Department of the Interior, Sally Jewell (in her official capacity as Secretary of the Interior), the Bureau of Indian Affairs, and Larry Roberts (in his official capacity as Acting Assistant Secretary – Indian Affairs, United States Department of the Interior) (collectively, “Federal Defendants”), hereby move to alter or amend the Court’s December 30, 2015 Opinion and Order [ECF No. 1280] and accompanying Judgment [ECF No. 1281]. In particular, Federal Defendants respectfully ask the Court to amend the judgment with respect to the fourth of the seven listed requirements for an accounting, as Federal Defendants will not be in a position to carry out all of the specific tasks ordered within the currently required time frame.¹

STANDARD OF REVIEW

A Rule 59(e) motion to alter or amend judgment is warranted where there is (1) an intervening change in the controlling law, (2) new evidence previously unavailable, or (3) the

¹ The fact that this motion only addresses the specific issue of the ordered requirements for an accounting should not be construed as seeking to waive or abandon any right to seek appellate or other further review of this or any other issue in the Court’s Opinion and Order, and Judgment.

need to correct clear error or prevent manifest injustice. Servants of the Paraclete v. Does, 204 F.3d 1005, 1012 (10th Cir. 2000); Grayson v. DynaTen Corp., No. 10-CV-795-TCK-PJC, 2012 WL 1995284, at *1 (N.D. Okla. May 31, 2012). A motion to alter or amend judgment is not appropriate, however, to revisit issues already addressed or advance arguments that could have been raised in prior briefing. Id.

ARGUMENT

The Opinion and Order, and the accompanying Judgment, define seven requirements for the ordered accounting. Pursuant to the Judgment, this accounting is to be provided to Plaintiffs “within six months after either the entry of this judgment or the conclusion of any appeal, whichever is later.” Judgment at 2 [ECF No. 1281]. At present, Federal Defendants believe that the seven requirements can largely be met within the six month time frame. However, there is one portion of the fourth requirement that Federal Defendants do not believe can be completed within the six-month time frame. Specifically, Federal Defendants do not believe that they can “identify . . . the contract number for” each and every “oil and/or gas lease on which . . . payment is made.” Id.; Opinion and Order at 26 [ECF No. 1280]. Because this issue has not already been addressed, either in the administrative record or through any briefing on this issue, Federal Defendants seek to have the Opinion and Order, and the accompanying Judgment, altered or amended to either provide for an accounting that can reasonably be completed within the deadline provided, or alter the deadline to one that allows a reasonable time for completion.

The administrative record for this case contains, among other things, the monthly Statements of Account that the Federal Defendants provide to the Osage Nation for their tribal trust account, for the time period of 2006 through 2013. See ECF No. 1212-2 and 3 (Administrative Record); Transcript of Status Conference held March 6, 2014 [ECF No. 1224] at

5 (Federal Defendants “proposing to file a record that would cover 2006 to the present. * * *

The present would at least include all four quarters of 2013.”). Those Statements of Account provide information that identifies and describes the source of each trust receipt. Specifically, with respect to receipts for oil and/or gas leases, the Statements of Account sometimes, but not always, provide “the contract number.” In general, each receipt includes the date of payment, and other identifying information and transaction data. See Declaration of Alyce Larsen (“Larsen Decl.”) at ¶ 4 (Exhibit 1, hereto) (Ms. Larsen is the Tribal Program Manager in the Office of Historical Trust Accounting, Office of the Special Trustee, Department of the Interior). However, not every receipt includes a “contract number” (or an analogous lease number). See id. at ¶ 5. In particular, when it is a purchaser who makes a payment on behalf of a lessee, rather than a payment made directly by a lessee, the receipt may include information about the purchaser who made the payment, including a unique purchaser number, instead of a “contract number.” See id. While the purchaser number, or other identifying information, can be used to determine the contract or lease number, this requires additional research, and may require retrieving paper records from storage. See id. at ¶ 7. Particularly when paper records are required, this can be a lengthy and time-consuming process. See id. at ¶¶ 8, 9. Because this specific issue was not raised on remand, no information is provided in the administrative record as to whether contract or lease numbers are used, or how long it would take to trace from the other information provided for such entries in the Statements of Account to any “contract number.”

For example, the page of the administrative record at ECF No. 1212-2 at 1111 (redacted excerpt attached as Exhibit 2, hereto) appears typical, and is instructive. On that page of the Statement of Account for the period 01/1/10 through 01/31/10, there are five receipts for oil

and/or gas leases. The first receipt involves a payment made directly by the lessee and includes a “contract number.” However, for the other four receipts, payments have been made by the purchaser on behalf of the lessee, not directly by the lessee. These receipts are instead identified by the purchaser who made the payment, both by name and a unique purchaser number (among other information).

It is undisputed in this case that the Osage tribal trust account is held in trust for the Osage Nation, and Federal Defendants provide these Statements of Account to the Osage Nation for this reason. Federal Defendants understand that this Court’s Opinion and Order, and accompanying Judgment, require that “an accounting of the Osage tribal trust account” be provided to the Indians owning headrights that are the Plaintiff class here, see, e.g., Opinion and Order (granting Motion to Certify Class, Jan. 31, 2014) [ECF No. 1196] at 2, and further understand that this Court has provided very specific requirements for the scope of this accounting. For those receipts for oil and/or gas leases that do not include “the contract number” among the information provided, Federal Defendants believe that they can use the other information provided to determine this specific additional piece of information (or an analogous “lease number”). See Larsen Decl. at ¶ 7. However, Federal Defendants do not believe that they can do this within six months of the Judgment. See id. at ¶ 9. It is expected that there are thousands of receipts for oil and/or gas leases over the specified time period. See id. at ¶ 8. While it is not yet known precisely how many of these may not include “the contract number,” a cursory review of the Statements of Account that are already part of the administrative record reveals that this is not likely to be an insubstantial number. See id. The work required to use the other information provided to trace back to “the contract number” (or an analogous “lease

number”) is similarly likely to be substantial and, at present, is estimated at 18 months (and, in any event, to exceed 6 months). See id. at ¶ 9.

To the extent that the intent of this Court’s Opinion and Order, and accompanying Judgment, was to require (among other things) the Federal Defendants to provide to Plaintiffs the unredacted Statements of Account for the tribal trust account, from 2002 to the most recent statement, the United States does not at present foresee any issue with meeting the six month deadline. For example, if the fourth requirement is amended to read (alterations underlined):

The accounting must briefly identify and describe the source of each trust receipt (e.g., the name of the payer/lessee and the contract number for the oil and/or gas lease on which payment is made);

OR

The accounting must briefly identify and describe the source of each trust receipt (i.e., the name of the payer/lessee and the contract number, lease number, or other identifying information for the oil and/or gas lease on which payment is made);

or some similar alteration, then Federal Defendants believe this could be relatively quickly met by providing to Plaintiffs those Statements of Account for this time frame that have already been provided to the Osage Nation but have not yet been provided to Plaintiffs as part of their unredacted copy of the administrative record, and presently believe that all other requirements could be met within the mandated six months. Alternatively, should this Court require, for any oil and/or gas lease where the Statement of Account does not already list “the contract number” (or an analogous “lease number”), that Federal Defendants trace and obtain this information, Federal Defendants will do so, but respectfully request that the Judgment instead be amended to provide more time for this more complicated task.

CONCLUSION

For these reasons, Federal Defendants respectfully request that this Court alter or amend the Judgment to either provide for an accounting that can reasonably be completed within the deadline provided, or alter the deadline to one that allows a reasonable time for completion.

RESPECTFULLY SUBMITTED this 27th day of January, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of January, 2016, I electronically transmitted the foregoing Federal Defendants' Rule 59(e) Motion to Alter or Amend the Judgment to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants.

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