

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LAC COURTE OREILLES BAND OF LAKE
SUPERIOR CHIPPEWA INDIANS; LAC DU
FLAMBEAU BAND OF LAKE SUPERIOR
INDIANS; SOKAOGAN CHIPPEWA INDIAN
COMMUNITY, MOLE LAKE BAND OF
WISCONSIN; BAD RIVER BAND OF LAKE
SUPERIOR CHIPPEWA INDIANS; ST. CROIX
CHIPPEWA INDIANS OF WISCONSIN; and
RED CLIFF BAND OF LAKE SUPERIOR
CHIPPEWA INDIANS,

Plaintiffs,

v.

STATE OF WISCONSIN; WISCONSIN NATURAL
RESOURCES BOARD; CATHY STEPP;
KURT THEIDE; and TIM LAWHERN,

Defendants.

ORDER

74-cv-313-bbc

Plaintiffs have filed a motion under Fed. R. Civ. P. 60(b)(5) to amend the judgment in this case so that it permits them to engage in deer hunting at night under certain circumstances. Having reviewed the parties' filings, I am persuaded that the motion should not be decided without the benefit of the hearing that is scheduled for July 22, 2013.

The parties have filed a joint request for a status conference to discuss the scope of the hearing. That is unnecessary. At the hearing, the parties should address both parts of

the standard under Rule 60(b)(5), which are whether there has been a “significant change in circumstances” since the judgment was entered and whether plaintiffs’ proposed modification to the judgment is “suitably tailored” to the changed circumstances. Rufo v. Inmates of Suffolk County Jail, 502 U.S. 367, 383-84 (1992). It is for the parties to decide what evidence they wish to present in support of their respective positions on those issues. If this explanation does not resolve any disagreements the parties have about the scope of the hearing, they may renew their motion, identifying the specific dispute that they have.

Also before the court is defendants’ “motion to enforce the scheduling order and to exclude portions of the McGeshick expert report.” Dkt. #302. Defendants raise two arguments in this motion. First, they argue that the court should not consider any evidentiary materials that were not filed with plaintiffs’ opening brief in support of the Rule 60 motion. Because I have decided to hold a hearing on plaintiffs’ motion and defendants do not argue that they have been prejudiced by any later-filed materials, I am denying that aspect of defendants’ motion.

Second, defendants seek to exclude testimony by plaintiffs’ expert Chris D. McGeshick on various subjects because he has not demonstrated that he is qualified. Having reviewed defendants’ motion and McGeshick’s report, I conclude that defendants’ objections are proper matters for cross examination rather than exclusion. Particularly because plaintiffs’ motion is being resolved by the court rather than a jury, I see little harm in allowing McGeshick to testify. To the extent defendants believe that a particular opinion is not sufficiently supported, they may attempt to demonstrate that at the hearing.

ORDER

IT IS ORDERED that

1. Defendants' "motion to enforce the scheduling order and to exclude portions of the McGeshick expert report," dkt. #302, is DENIED.

2. The parties' joint motion for a status conference, dkt. #313, is DENIED.

Entered this 17th day of June, 2013.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge