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

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 05-CV-329-GKF-SAJ**
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

STATE OF OKLAHOMA'S RESPONSE IN OPPOSITION TO "DEFENDANTS' JOINT MOTION FOR ADDITIONAL TIME TO PRODUCE EXPERT REPORTS" [DKT #1722]

TABLE OF CONTENTS

I. Introduction 1

II. Legal Standard 1

III. Factual Background 2

IV. Argument 6

A. The request for extensions is untimely 6

B. The factual premises for the request for extensions are inaccurate or otherwise without merit 7

1. Defendants have long been aware of the details of the State's claims and should have been preparing their defenses accordingly 7

2. The State's production of sampling and analysis data has been extensive 9

3. The State produced its non-damages experts' considered materials in an organized fashion 10

4. Defendants have failed to avail themselves of the opportunity to depose the State's retained non-damages experts in a timely manner 13

5. "Good cause" does not exist for the requested general extension 15

6. "Good cause" does not exist for the requested expert-specific extensions 16

a. Dr. Michael McGuire 16

b. Mr. Wayne Grip 18

c. Dr. Victor Bierman 18

d. Drs. Sullivan and Horne 21

e. Aquatic ecology experts 22

C. The requested extensions would unfairly prejudice the State 22

V. Conclusion 25

TABLE OF AUTHORITIES

Cases

ADC Telecommunications, Inc. v. Thomas & Betts Corp., 2001 WL 1381098 (D. Minn. Oct. 18, 2001) 1
Deghand v. Wal-Mart Stores, Inc., 904 F. Supp. 1218 (D. Kan. 1995) 9
Mann v. State of Colorado, 2008 WL 2037594 (D. Colo. May 12, 2008) 7

Rules

Fed. R. Civ. P. 26(b)(4) 14
Fed. R. Civ. P. 59(e) 7
Fed. R. Civ. P. 72(a) 7

COMES NOW the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, ("the State"), and submits this response in opposition to "Defendants' Joint Motion for Additional Time to Produce Expert Reports" [DKT #1722].

I. Introduction

After strenuously opposing both of the State's requests for extension of the non-damages expert disclosure deadline -- requests for extension that would have afforded both sides equivalent extensions of time to make their respective disclosures -- and after the State has already disclosed its non-damages experts, Defendants now seek improper unilateral extensions of the disclosure deadline for their non-damages experts. Defendants' request for extensions should be denied for the following reasons: (1) the request for extensions is untimely; (2) the factual premises for the request for extensions are inaccurate or otherwise without merit; and (3) the requested extensions would unfairly prejudice the State.

II. Legal Standard

As stated in its May 15, 2008 Order, DKT #1706, "the court has admonished all parties that extensions of the scheduling order would be rarely granted, and only upon unforeseeable good cause." Indeed, as Defendants pointed out in their March 25, 2008 Response to Plaintiffs' [sic] Motion for Extension of Time to Comply with Certain Requirements of the Amended Scheduling Order, DKT #1652, "'scheduling orders must mean something if the parties and the court are ever to achieve some sort of finality'" (quoting *ADC Telecommunications, Inc. v. Thomas & Betts Corp.*, 2001 WL 1381098, *4 (D. Minn. Oct. 18, 2001)). Accordingly, as Defendants have noted, the good cause standard "is a demanding one." *See id.*

III. Factual Background

Despite being well-aware of the substance of the claims being advanced by the State in this lawsuit, Defendants have apparently sat on their hands these past three-plus years, rather than diligently preparing their own defenses. Now Defendants request significant, unilateral extensions of the dates for disclosing their non-damages experts. The State opposes Defendants' request. The relevant background facts are as follows:

1. Concerns about pollution resulting from poultry waste were recognized long before the State filed this lawsuit. *See, e.g.,* Ex. 1 (Peterson's Poultry Water Quality Handbook); Ex. 2 (Tyson Environmental Poultry Farm Management); Ex. 3 (Engel Report, pp. 4-11 & Appendix A); DKT #978 (Exs. 7-13 to "State of Oklahoma's Response in Opposition to 'Defendants' Motion for Entry of a Case Management Order'").

2. This case was filed on June 13, 2005. *See* DKT #2. The Complaint contained an extensive explanation of the basis and scope of the State's claims, as have the State's two amended complaints. *See* DKT #18 & #1215.

3. To date, the State has made a Rule 26(a) disclosure, responded to some 208 interrogatories, 457 requests for production and 286 requests for admission, produced more than a million pages of documents, and, not including records custodians, tendered approximately 15 witnesses for deposition.[1] And since February 1, 2007, the State has disclosed to Defendants on a continuing basis sampling and analysis data (with supporting materials) totaling over 50,000 pages.

4. On March 9, 2007, this Court entered its Scheduling Order. *See* DKT #1075. That Scheduling Order provided for a two-month spacing between State's non-damages experts

---

[1] This figure does not include the nine retained expert witnesses it tendered for deposition in connection with the preliminary injunction proceedings.

and Defendants' non-damages experts. Defendants did not move for reconsideration of or file objections to that Scheduling Order, including its structure of a two-month spacing between the disclosure of the State's non-damages experts and Defendants' non-damages experts.

5. Nevertheless, on September 26, 2007, the Cargill Defendants moved to modify the Scheduling Order, seeking, among other things, a one-year spacing between the sides' respective non-damages expert disclosure deadlines. *See* DKT #1297.[2] Defendants likewise spent the majority of their oral argument at the November 6, 2007 hearing seeking a lengthier spacing between the sides' respective expert disclosure deadlines. *See* Nov. 6, 2007 Hearing Transcript, pp. 166-88.

6. On November 15, 2007, "having considered the remaining discovery issues and the arguments and authority presented by the parties," this Court entered its Amended Scheduling Order. *See* DKT #1376. The Amended Scheduling Order provided for a three-month spacing between State's non-damages experts and Defendants' non-damages experts. Simply put, Defendants presented their case for a far lengthier spacing between the respective disclosures, and the Court rejected it. Defendants did not move for reconsideration of or file objections to the Amended Scheduling Order.

7. On November 14, 2007, in connection with its Motion for Preliminary Injunction, the State provided affidavits from a number of its experts. *See* DKT #1373. While the focus of the Motion for Preliminary Injunction was bacterial pollution, many of the topics covered by the

---

[2] This motion was subsequently joined by the Tyson Defendants, *see* DKT #1299, Defendant Peterson Farms, Inc., *see* DKT #1328, Defendant Simmons Foods, Inc., *see* DKT #1348, and the Cal-Maine Defendants, *see* DKT #1349.

State's experts addressed issues pertinent to the case as a whole.[3] These experts produced considered materials, and were subjected to cross-examination by Defendants in depositions and in the preliminary injunction proceedings.

8. Subsequently, on March 7, 2008, the State, careful not to upset the basic expert disclosure structure adopted by the Court in the Amended Scheduling Order, moved for mutual four-month extensions of the deadlines for disclosure of the two sides' respective non-damages experts. *See* DKT #1618. Despite the fact that under the State's proposal the two sides would enjoy equivalent extensions to their respective non-damages expert disclosure deadlines, Defendants strenuously opposed the State's motion, arguing:

> The proposed changes, therefore, simply compresses the balance of the litigation schedule, shrinking by four months the time that Defendants have to digest Plaintiffs' [sic] expert case, and then prepare . . . their dispositive motions, due in April 2009, any Motions in Limine, due in July 2009, and finally to respond at trial, in September 2009. The net effect of Plaintiffs' [sic] request, therefore, would be only to deprive Defendants of four additional months in which to prepare to respond to Plaintiffs' [sic] scientific case.

See DKT #1652. On March 27, 2008, the Court granted a mutual 45-day extension. *See* DKT #1658.

9. By agreement of the parties, on April 1, 2008, the State disclosed its list of experts, and set forth their areas of expertise and a general description of the area of their anticipated testimony, thereby giving Defendants further information for their expert preparations. *See* Ex. 4.

10. On May 13, 2008, the State, again careful not to upset the basic expert disclosure structure of the Amended Scheduling Order, moved for mutual brief (*i.e.,* one to two week) extensions of the deadlines for disclosure of certain of the two sides' respective non-damages

---

[3] For example, aspects of the State's fate and transport case and aspects of the State's phosphorus case were previewed for Defendants at the preliminary injunction hearing.

experts. *See* DKT #1702. Defendants again strenuously opposed this motion, arguing that "[t]his Court has indicated on several occasions . . . that the deadlines in its Scheduling Order for expert reports are firm." *See* DKT #1704 ("Defendants' Joint Response in Opposition to Plaintiff's Motion for Extension of Expert Witness Report Disclosure Deadline"). Defendants went on to argue:

> The Court should remain firm with the deadlines in the case at this stage, or else other deadlines will have to be moved and the domino effect will render the Scheduling Order meaningless, and the course of the case will lack the necessary predictability for proper preparation and fairness for both sides.

See id.

11. In its May 15, 2008 Order the Court stated: "Defendants object to the extensions sought and correctly recite multiple prior occasions on which the court has admonished all parties that extensions of the scheduling order would be rarely granted, and only upon unforeseeable good cause." *See* DKT #1706. The Court found good cause for the State's request and granted a very brief mutual extension to the two sides. *See id.*

12. The State made disclosure of its 16 retained non-damages experts pursuant to the deadlines set forth in the Court's orders. It has also produced these experts' respective considered materials.

13. Shortly after the last of these experts were disclosed to Defendants, the State offered deposition dates for each of its retained non-damages experts. *See* Ex. 5. Defendants have accepted a handful of these dates. On June 23, 2008, Defendants sent the State a calendar of proposed dates extending all the way to September 30, 2008. *See* Ex. 6.

14. Under the current schedule, Defendants are required to disclose all of their non-damages experts on August 14, 2008, with the following exceptions: (a) Defendants' expert reports relating to watershed modeling, production of poultry waste and the management thereof,

and river and stream ecological / biological injuries are due on August 21, 2008; (b) Defendants' expert reports relating to lake modeling, and lake injuries or limnology are due on August 28, 2008.

15. Notably, at no time in responding to the State's requests for mutual extensions of the deadlines for disclosure of the two sides' respective non-damages experts did Defendants indicate that they intended to seek an additional unilateral extension of time to disclose their non-damages experts. Rather, Defendants waited until after the State's disclosure deadline had already passed to request their extension.

IV. Argument

The theories and facts underlying the State's claims have been long-known to Defendants. In fact, Defendants have had more than three years to work on their non-damages expert disclosures. That Defendants are now, at the eleventh hour, revealing that they are ill-prepared to make timely disclosure of the non-damages expert witnesses is inexplicable. Defendants have simply not substantiated any "good cause" sufficient to justify an extension of the disclosure deadline for their non-damages experts.

A. The request for extensions is untimely

Defendants' request for extensions seeks to alter the fundamental structure of the Amended Scheduling Order, which provides for a three-month period between the disclosure of the State's non-damages experts and Defendants' non-damages experts. Lacking a credible claim of "good cause," Defendants' request for extensions is, at its core, a motion to reconsider this Court's Amended Scheduling Order. Under the applicable Rules, it is untimely.

As noted above, the original Scheduling Order provided for a two-month spacing between the disclosure of the State's non-damages experts and Defendants' non-damages experts.

Defendants did not move for reconsideration of or file objections to the original Scheduling Order. Nonetheless, Defendants, in September 2007, moved to modify that Scheduling Order and sought a one-year spacing between these disclosures. The State, on the other hand, sought to maintain the existing spacing between these disclosures. On November 15, 2007, the Court, after extensive briefing and oral argument, considered and rejected Defendants' arguments for a one-year spacing, and instead adopted a three-month spacing between these disclosures. *See* Amended Scheduling Order, DKT #1376. Again, Defendants neither moved for reconsideration under Rule 59(e)[4] of nor filed an objection under Rule 72(a) to the Amended Scheduling Order within 10 days. *See* Fed. R. Civ. P. 59(e) (requiring motions to alter or amend be filed within 10 days); Fed. R. Civ. P. 72(a) (requiring objections be filed within 10 days). Defendants have therefore waived any purported argument that the spacing between the respective disclosures of non-damages experts is somehow prejudicial, and are precluded from now seeking to modify the fundamental structure of the Amended Scheduling Order to provide for lengthier spacing between the parties' expert disclosures.

B. The factual premises for the request for extensions are inaccurate or otherwise without merit

1. Defendants have long been aware of the details of the State's claims and should have been preparing their defenses accordingly

Defendants' claim that they have not known how to prepare their defense is not credible. The simple fact of the matter is that from the beginning of this case Defendants have been able to select and prepare their non-damages experts and defense.

---

[4] *See, e.g., Mann v. State of Colorado*, 2008 WL 2037594, *1 (D. Colo. May 12, 2008) (noting that motions for reconsideration filed within 10 days of an order are treated as Rule 59(e) motions).

First, the State's Second Amended Complaint, DKT #1215, provides a detailed, fact-rich 36-page, 146-paragraph narrative of the conduct by Defendants and injuries suffered by the State that give rise to the State's claims.[5]

Second, as noted in section III, paragraph 2 above the problem of poultry waste run-off has been extensively documented in reports and the literature, as well as in Defendants own documents. *See also* Ex. 7 (Engel Decl., ¶ 8); Ex. 8 (Teaf Decl., ¶ 13).

Third, as noted in section III, paragraph 3 above, the State has made extensive disclosures about its case to Defendants in discovery, and has provided an extraordinarily detailed roadmap of how it intends to prove its case.

Fourth, as noted in section III, paragraph 3 above, in February, 2007, the State began production of its sampling and analysis data (and supporting materials).

Fifth, as noted in section III, paragraph 7 above, in connection with the preliminary injunction proceedings Defendants were able to preview many of the subjects on which a number of the State's retained experts will opine in the case in chief.

Sixth, on April 1, 2008 -- the original expert disclosure date under the Amended Scheduling Order -- the State disclosed to Defendants the identities of its retained non-damages experts, their areas of expertise, and a general description of the area of their anticipated testimony.[6]

---

[5] In fact, the conduct described in this case is very similar to the conduct that gave rise to the *City of Tulsa* lawsuit in which a number of Defendants were defendants (and in which those defendants selected, prepared and disclosed those experts they thought appropriate).

[6] When Defendants approached the State about their requested extension, the State requested that Defendants extend the State the similar courtesy of disclosing such information about their retained experts. Defendants refused to make such a commitment.

Thus, contrary to Defendants' suggestion, the facts and theories of the State's case are not, and have never been, hidden. Defendants' strategic decision to take a "wait-and-see" approach to this case should not be countenanced by this Court. They have long known what this case is about, they have long had the information they need to prepare whatever defenses they might believe are applicable, and they have long known the date on which they are required to disclose their experts. Simply put, if Defendants have not timely selected and prepared their experts, it is no fault of the State. *See, e.g., Deghand v. Wal-Mart Stores, Inc.*, 904 F. Supp. 1218, 1221 (D. Kan. 1995) ("Carelessness is not compatible with a finding of diligence and offers no reason for a grant of relief").

2. The State's production of sampling and analysis data has been extensive

Beginning on February 1, 2007, and continuing to the present, the State has produced the sampling and analysis data developed through CDM's environmental sampling program. The State has produced tens of thousands of pages of lab reports, chain of custody reports, field sheets, field books, quality assurance reports and the Standard Operating Procedures under which the environmental samples have been taken. They have been provided the results of water quality sampling, bacteria data, chemical analysis, including testing for hormones, data on fish counts, and data concerning benthic and macro invertebrate sampling.

The State has further provided Defendants with splits of the soil, waste and water samples taken under subpoena. Defendants chose to analyze some of these and then according to their counsel stopped any analysis of these splits. Regarding the DNA tracking, the State provided Defendants the data from that testing beginning on September 27, 2007, and as additional testing was done, the State promptly updated the data as it became available. On November 7, 2007, the State also the provided Defendants with a detailed report as to why the

State's expert concluded that they had a valid biomarker for poultry waste. *See* Ex. 9. In order that Defendants could perform their own testing of the DNA samples gathered by the State, the State also provided Defendants with splits of these DNA isolates.

Simply put, the data supporting the State's scientific case has been well-known, and Defendants have had ample time to retain and prepare their expert witnesses.[7]

3. The State produced its non-damages experts' considered materials in an organized fashion

Defendants' complaints regarding the State's production of the non-damages experts' considered materials are completely without merit. The State produced these considered materials in an orderly fashion, and Defendants' arguments that these materials were produced in a "disorganized and confusing manner" are simply incorrect.[8]

---

[7] Defendants also complain that they have been prejudiced by the fact that the State has not produced the databases of septic systems, sewage overflows, and environmental complaints maintained by the Department of Environmental Quality. Defendants' Motion, p. 7. This argument is entirely make-weight as it ignores the fact that the relevant contents of these databases were produced to Defendants in hard-copy form in November 2006 and the sewage overflow information was provided again in response to a Cal-Maine Interrogatory in January 2008. Thus, Defendants have had many months to review and analyze this information. Further, the State will be providing these databases as a supplement to information already provided. Further, Defendants were able to fully interrogate the State's 30(b)(6) witness regarding these topics (7 hours for septic systems and environmental complaints and 8 hours for sewage overflows), based upon the extensive document production made by the State.

Defendants yet further complain that they have been prejudiced in that they have not yet received certain privileged and protected documents that were the subject of the Magistrate Judge's January 16, 2008 Order [DKT #1463]. On April 30, 2008, however, Defendant Peterson Farms, Inc., the requesting party, agreed to a stay of production of the disputed documents pending the Court's ruling on the State's appeal of that Order. *See* DKT #1693. Thus, Defendants' claims of prejudice from the delayed production of these documents ring hollow. Plainly, neither of these two complaints justifies additional time for completion of Defendants' expert reports.

[8] Indeed, Defendants' Motion was the first time the State was made aware of Defendants having an issue with the manner in which the materials were produced.

The State organized its production of the expert considered materials in a user-friendly and a simple-to-navigate manner. A hard drive, which was timely produced on May 15, 2008, contained the vast majority of the expert considered materials the State produced. This hard drive was clearly organized in a file structure with a folder for each expert. Each expert's folder contained three clearly labeled subfolders that held that expert's (1) correspondence, (2) C.V. and other materials such as lists of prior testimony, and (3) materials considered in forming their opinions. *See* Ex. 10 (print-out of folder structure on hard drive produced to Defendants). A lengthy letter that explained the materials being produced for each expert and their organization on the hard drive was included with the production of the hard drive. *See* Ex. 11 (May 14, 2008 Letter from Xidis to Southerland). This letter provided a road map for the production, and encouraged Defendants to contact counsel for the State with any questions (which they apparently chose not to do, electing instead to file the instant motion).

As was explained in the May 14, 2008 letter to Defendants, the State tried to preserve the file structures maintained by the experts for their considered materials whenever possible to make the collections of materials easier to understand and navigate. Defendants' Motion, p. 8, complains that "Plaintiffs intermixed charts, correspondence, and data in electronic folders." To the extent materials such as "charts" or "data" were included in "correspondence" subfolders on the hard drive, this was simply because email or other correspondence included charts or data as attachments to email or correspondence. If an expert saved an email or letter in a folder with other types of information in their electronic files, these materials were simply produced as the experts kept them. Plainly, Defendants have mischaracterized the State's production, and their complaints about it should not be credited.

Defendants' complaint that supplements have been made in a "haphazard manner" is another mischaracterization of a straightforward process of producing documents. The hard drive produced on May 15, 2008, contained 538.4 gigabytes of data, a very large amount of information. Additional timely productions were made for State experts Engel, Stevenson, Cook, Welch and Wells[9] that amounted to approximately 5.32 gigabytes.[10] The State has made some supplements to the expert productions, which together total approximately 2.529 gigabytes, a mere 0.46% of the total amount of expert materials produced by the State. As explained to Defendants at the beginning of the production process, the supplemental materials included materials that experts continued to work on up until the deadline for their reports and correspondence created shortly before or while the hard drive was being created and sent to Defendants.[11] *See* Ex. 11 (May 14, 2008 Xidis letter to Southerland). Production of these supplements was made to Defendants as quickly as possible. Further, the contents of these supplemental productions of expert materials were clearly explained in corresponding cover letters. *See, e.g.,* Defendants' Motion, Exs. 15 and 16. There is certainly no evidence that the

---

[9] The expert disclosure deadlines for Drs. Engel and Stevenson were May 22, 2008, and Drs. Cook, Welch and Wells were May 29, 2008.

[10] Defendants' representations as to the amount of data turned over by the State appear to be inaccurate. Defendants' Motion, as well as the Longwell Declaration attached thereto, state that the hard drive contained 690 gigabytes of data. However, according to "Exhibit A" to the Longwell Declaration, the hard drive contained 555.96 gigabytes. According to the State's calculation, the hard drive contained 538.4 gigabytes. Further, the Longwell declaration states that CDs and DVDs produced by the State contained 13 gigabytes. However, the State's calculations reflect that 5.32 gigabytes were timely produced in a format other than the hard drive for Drs. Engel, Stevenson, Cook, Welch and Wells combined. The State's calculations are that an additional 2.529 gigabytes of data were supplemented to the expert production on CDs and DVDs.

[11] Other supplemental expert materials were produced as a result of quality control checks performed by the State on the collection of material provided on the hard drive. As a result of the quality control process, the State provided a small number of supplemental materials for Drs. Johnson, Fisher, Cooke, Welch, and Stevenson totaling 221 items.

relatively small amount of supplemental materials justifies the lengthy extensions of deadlines that Defendants seek.

Further, it should be noted, the State has been attentive to the handful of requests and questions by Defendants concerning its production of expert considered materials. For example, Ms. Southerland requested to have two zip files reproduced because Defendants were having trouble opening them. This was done promptly. *See* Ex. 12. Additionally, Ms. Southerland made one request regarding a supposedly missing page from the Smith report (which, it turned out, was not in fact a missing page but simply a pagination error), and one inquiry about several figures referenced in Dr. Olsen's report (which were provided to Ms. Southerland the next business day after she made her request). *See* Ex. 13. Ms. Southerland also made one request asking which expert a CD of materials corresponded to, despite the fact this was made abundantly clear in the cover letter that accompanied the disk on May 15, 2008. *See* Ex. 14. These extremely minor matters certainly do not provide grounds for the extensions sought by Defendants. If Defendants had truly been confused by the State's production of expert considered materials or truly found the manner of production problematic, then they would have asked the State more than this small handful of simple questions. Further, they should have made their concerns known to the State prior to filing this motion.

4. Defendants have failed to avail themselves of the opportunity to depose the State's retained non-damages experts in a timely manner

In May 2008, the State disclosed 16 retained experts on non-damages issues and provided to Defendants comprehensive, highly-detailed reports. Defendants now complain that they will not have time to digest these reports and depose the State's retained experts prior to making their own expert disclosures. Defendants' complaint lacks merit for the following reasons.

First, Defendants' complaint ignores the fact that on June 5, 2008, the State provided Defendants with a list of proposed deposition dates between June 18 and August 28, 2008. *See* Ex. 5. To date, Defendants have accepted only a handful of these dates. Moreover, on June 23, 2008, implicitly conceding that they do not need to depose all of the State's experts before the deadline for disclosing their non-damages experts, Defendants sent the State a calendar of proposed dates extending all the way to September 30, 2008. *See* Ex. 6.

Second, Defendants' complaint hinges on the misapprehension that Defendants are entitled to a deposition of each of the State's retained experts before they disclose their own retained experts. While Fed. R. Civ. P. 26(b)(4) plainly allows for the deposition of a retained expert following the disclosure of his / her report, it does not require one, let alone require one before the opposing party discloses its experts. Indeed, the 1993 amendments to Fed. R. Civ. P. 26 significantly expanded the disclosure requirements for retained expert witnesses, requirements that led the advisory committee to note that "in many cases the report may eliminate the need for a deposition." *See* Advisory Committee Notes to 1993 Amendments to Fed. R. Civ. P. 26. The comprehensiveness of the State's experts' reports -- a fact Defendants cannot dispute -- weighs heavily against the need for a deposition of these experts prior to Defendants' disclosure of their own experts.

Third, as noted above, Defendants' complaint ignores the fact that Defendants were able to preview in connection with the preliminary injunction proceeding many of the subjects on which a number of the State's retained experts opine in the case in chief.

Defendants also complain about the fact that the State has disclosed 33 non-retained experts. Defendants' complaint about the non-retained experts ignores the fact that the identity of these individuals was disclosed in the State's April 1, 2008 letter to Defendants. Defendants

have thus had ample opportunity to begin deposing these individuals had they so desired.[12] Defendants' lack of initiative in pursuing such depositions is no justification for an extension.

5. "Good cause" does not exist for the requested general extension

Defendants would have this Court believe that they are being afforded only three months to respond to the State's non-damages expert evidence. This is simply incorrect. The fact of the matter is that Defendants have had more than three years to formulate their defenses to the State's claims.

As demonstrated above, Defendants clearly have long known the theories and facts underpinning the State's claims in this case. They have received the State's discovery, sampling and analysis data, expert reports and expert considered materials. They are represented by highly-experienced environmental litigators. Defendants could have -- indeed should have -- long ago begun diligently preparing their defenses to these claims. They should have retained their experts and started whatever sampling and other investigations (*e.g.*, modeling) they wanted to do years ago. *See, e.g.,* Ex. 7 (Engel Decl., ¶¶ 8-9); Ex. 8 (Teaf Decl., ¶¶ 9-15). Apparently and inexplicably, however, they have not. That they have not done so is no basis for an extension.

In fact, Defendants' request for a general extension is devoid of any concrete, specific evidence of why their non-damages experts cannot complete their work by August 14, 2008. Rather, Defendants speak in broad generalities. Defendants (despite having been asked by the State to do so) fail to state the identities of their non-damages experts, their areas of expertise, and a general description of the areas in which they are expected to give opinions. With the sole exception of Dr. Sullivan, Defendants also fail to state when they retained their non-damages

---

[12] In fact, it should not be overlooked that several of these individuals were deposed prior to the preliminary injunction hearing.

experts. Yet further, Defendants fail to state when their non-damages experts actually began to work. Finally, Defendants fail to provide affidavits from their non-damages experts in support of the request for the two-month extension detailing what specific difficulties they have encountered in completing their work. Even had they provided this information, grounds for an extension still would not exist for the reasons stated above. Defendants' failure to provide this information does, however, further underscore the unreasonableness of their request.

6. "Good cause" does not exist for the requested expert-specific extensions

In addition to their request for a general extension of two months, Defendants seek additional time -- ranging from four months to more than 9½ months -- for specific non-damages experts to produce their reports. As with the request for a general extension, Defendants' attempt to show "good cause" for the expert-specific extensions sought fails.

a. Dr. Michael McGuire

Defendants request a four-month extension (to December 15, 2008) to produce Dr. McGuire's expert report. Defendants and their expert, Dr. McGuire, claim that the State's experts' opinions related to public drinking water supplies are "novel and unexpected." This argument is highly suspect. Overall knowledge relating to the presence of disinfection byproducts and their association with human health dates back decades and general scientific knowledge and publicly available data regarding this issue are widely available. *See* Ex. 8 (Teaf Decl., ¶¶ 9-11). More specific to this case, the State has not only produced sampling results regarding trihalomethanes (THMs) and THM-forming potential, but also identified the increase in concentrations of disinfectant byproducts in its interrogatory responses. *See, e.g.,* Ex. 15 (April 27, 2007 Supplemental Interrogatory Responses to Tyson Foods, Interrogatory No. 10). Further, on February 8, 2007 -- <u>more than 16 months ago</u> -- the State produced to Defendants its

Standard Operating Procedure ("SOP") for Public Water Sampling. *See* Ex. 16 (SOP 1-2 (STOK0020778-0020786)). The SOP begins, "This standard operating procedure (SOP) describes field procedures for collection of public drinking water samples . . . for analysis of trihalomethanes (THM) and haloacetic acids (HAA)" and goes on to provide background about THM and HAA and to describe the sampling procedures the State would utilize. *Id.* Thus, there is no basis for the argument that the opinions expressed by the State's experts are "novel" or "unexpected." Moreover, as noted above, Defendants have long had access to the methodology and the underlying data utilized in the State's experts' analysis.

In his Declaration, ¶ 6, Dr. McGuire expresses concern that the State's experts have failed to gather and produce all of the information available regarding water quality and treatment in the IRW that he would have gathered. There were no impediments to Defendants gathering all publicly available information regarding this issue over the past 16 months. The information regarding this issue can be readily obtained. *See* Ex. 8 (Teaf Decl., ¶ 10). Neither Defendants nor Dr. McGuire assert that they have diligently pursued this information or explain why they could not have done so earlier.

Moreover, Defendants claim that Dr. McGuire needs an additional four months to complete his report because they <u>may</u> have to take the depositions of more than 10 representatives of water treatment facilities. Defendants' Motion, p. 12. Tellingly, however, to date Defendants have still failed to notice even a single deposition of a representative of a water treatment facility in the IRW. This failure to promptly gather the information that their experts "may" need demonstrates that Defendants are asserting phantom arguments.

b. Mr. Wayne Grip

Defendants request a four-month extension (to December 15, 2008) to produce Mr. Grip's expert report. There is no legitimate basis for this request. The issue as to whether bank erosion contributes to the phosphorus loading in the IRW is longstanding. Indeed, Defendants put forth erosion as a defense as early as March 15, 2006. *See, e.g.,* DKT #228 & 229 (Cargill Defendants' Third-Party Cross-claims). Further, on November 15, 2007, Defendants deposed former State employee Russell Dutnell on issues pertaining to bank erosion. Mr. Grip's work is not to rebut claims being made by the State, but is work to help Defendants assert an affirmative defense of an alternative contributor. There is absolutely no reason why Defendants should not have begun their expert work on this issue three years ago. No good cause exists to support a four-month delay in providing Mr. Grip's report and considered materials.

c. Dr. Victor Bierman

Defendants seek an extension of five months (to January 5, 2009) to produce the expert report of Dr. Bierman. Such a request is unreasonable.

While Dr. Bierman claims that he needs seven months from the time Dr. Wells' and Dr. Engel's "working models and associated data are provided," he and Defendants ignore the fact that they have had in their possession precisely the information they need to run Dr. Engel's and Dr. Wells' models since May 22 and May 29, respectively.[13] *See, e.g.*, Ex. 7 (Engel Decl., ¶ 3); Ex. 17 (Wells Decl., ¶¶ 3-5). The files necessary to run the models and other considered materials were provided in an identical directory/folder structure as to that on Drs. Engel's and Wells' computers. *See id.*

---

[13] The production of working copies of the models of Drs. Engel and Wells has been fully briefed in the State's Motion to Strike [DKT #1727] and the State's Opposition to Defendants' Motion to Compel Production of Plaintiffs' [sic] Working Models [DKT #____], which the State hereby incorporates by reference.

Further, the models used in reaching the conclusions within Dr. Engel's and Dr. Wells' reports are typical of the types of models used in hydrologic / water quality modeling of watershed systems such as the Illinois River Watershed. *See* Ex. 7 (Engel Decl., ¶ 4).[14] Defendants, however, put forth a baseless "cloak and dagger" argument as the grounds for the extension sought, claiming hidden codes and secret equations in the model. There is no basis for such claims. Modifying the equations within the watershed model itself is not typically considered standard practice for watershed models, and contrary to Defendants' assumptions, Dr. Engel did not do so. *See* Ex. 7 (Engel Decl., ¶¶ 5-6). Because Dr. Wells authored the lake / reservoir model he used, it is his practice to make alterations to the source codes where appropriate in conducting his modeling work. He did alter the source codes in his work in this case and provided the altered source codes to Defendants in a zip file named "sourcecode.zip". *See* Ex. 17 (Wells Decl., ¶ 7). Any change of the model codes in Dr. Wells' work can be seen by comparing the original source codes with the source codes used, and these were disclosed in the considered materials for Dr. Wells. *See* Ex. 17 (Wells Decl., ¶¶ 3 & 7). Neither Dr. Engel nor Dr. Wells hid any assumptions or calculations in their work. Therefore the need for additional time to "unearth" these codes and equations is completely unnecessary.

Defendants also apparently argue that Dr. Bierman needs time to evaluate the models themselves. An extension of time to complete this work is unnecessary. The hydrologic / water

---

[14] These models consist of an executable model file that uses numerous input files and produces one or more output files. *See id.* Defendants use the term "model" in different ways throughout their Motion, most often using it differently than the hydrologic / water quality modeling community would. Defendants use "model" to describe a "model setup," "model parameterization" or "model scenario." *Id.* This would consist of a hydrologic / water quality model <u>and</u> its supporting input files. The common use of the term "model" within the hydrologic / water quality modeling community, however, would refer to the hydrologic / water quality model itself (*e.g.*, HSPF, GLEAMS, SWAT) rather than the model plus input files that have been prepared to characterize a particular situation. *Id.*

quality models used by Drs. Engel and Wells have been widely discussed in numerous publications. Therefore, Dr. Bierman has literature available to him that describes the model assumptions, *see, e.g.,* Ex. 7 (Engel Decl., ¶¶ 7-8), and no additional time is required by Dr. Bierman to conduct this part of his assessment.

Defendants incorrectly claim that "Plaintiffs' [sic] experts have worked on their reports for more than three years." Motion, p. 2. Dr. Wells did not begin his work until late September, 2007. His final report was produced on May 29, 2008, on or about eight months after modeling work commenced. *See* Ex. 17 (Wells Decl., ¶ 5). Much of the modeling data was obtained from public agencies, and Defendants had much of the State's data before Dr. Wells was even retained. Defendants could have created their own IRW hydrologic / water quality model beginning in 2005 when this case was filed. *See* Ex. 7 (Engel Decl., ¶ 9). Thus, Defendants' consultants or experts could have initiated and completed a model of the system or an analysis of the system to evaluate the impact of runoff long ago.

Dr. Bierman claims that "just looking at Dr. Wells' model, it will take approximately 60 days just to evaluate these scenarios." He bases this assumption on Dr. Wells' time estimate for running the model (4-7 days) and analyzing the results (2-5 days) multiplied by the number of scenarios (5). It is important to note that this estimate is only valid if he has just one computer available for running the model. If Dr. Bierman has more than one computer available to run the model, the time to run the models and analyze the results would be significantly reduced.[15] *See* Ex. 17 (Wells Decl., ¶ 8).

Also, it should not be overlooked that in reviewing another modeling effort, generally much less time is required than the time required constructing a model. Critiques of hydrologic

---

[15] At times, Dr. Wells and his team used up to seven computers to run the scenarios.

modeling do not require the recreation of running of the model. *See* Ex. 7 (Engel Decl., ¶ 7). Defendants want seven more months to review Dr. Wells' work. This is almost the same period of time as required to build the model, and it is not necessary for a review and critique of Dr. Wells' work.[16] *See* Ex. 17 (Wells Decl., ¶ 9).

Defendants should not be allowed to wait for the State's expert disclosures before starting to prepare their defense. Defendants have failed to provide any information regarding precisely how long Dr. Bierman has been retained and what efforts he has made to date regarding his modeling analysis. In fact, Dr. Bierman could have developed his own model of the IRW by this time if he had been timely retained and authorized to do so by Defendants. *See* Ex. 7 (Engel Decl., ¶ 9). The requested extension is unreasonable, unnecessary and could have been avoided.

d. Drs. Sullivan and Horne

Defendants seek an extension of almost six months to produce the reports of Drs. Sullivan and Horne. The grounds stated by Defendants for these extensions highlight the laggard nature of Defendants' scientific work in this case.

Dr. Horne claims that he needs to conduct additional sampling in the IRW. The State does not dispute that Defendants are entitled to conduct their own sampling and, in fact, has pointed out time and again that Defendants have had every opportunity to do so. Indeed, it is perplexing why Defendants have not done so before now. Defendants could have created their own hypothesis and gathered data to evaluate it from the outset of this case. *See, e.g.,* Ex. 8

---

[16] Defendants claim that if Dr. Bierman is unable to recreate the modeling work of Drs. Engel and Wells (even though this is unnecessary), he will have to determine why. *See* Defendants' Motion, p. 15. This basis for extending the deadline for Dr. Bierman is premature. According to Defendants, Dr. Bierman has not yet run the models. Asking for additional time to determine why he cannot recreate the modeling results, when there is no evidence that he cannot do so, fails to establish good cause for an extension. Moreover, it is extremely telling that he is convinced the models will not work at this stage of his analysis (*i.e.*, before it has even begun).

(Teaf Decl., ¶¶ 13-15). Defendants' dilatory approach to sampling fails to meet the "good cause" standard required to extend these deadlines.

Further, Dr. Sullivan complains that the State's "late and rolling production" has impeded his work in this case. As discussed in more detail above and in the States' briefing on its production of sampling data and analysis, *see* DKT #1656, #1691 & #1732, such arguments should not be credited as the delayed materials make up a miniscule percentage of the overall production.

Finally, Drs. Sullivan and Horne argue that they cannot complete their work in this case because they must analyze Dr. Bierman's results before doing so.[17] If this is so, Defendants should have asked Dr. Bierman to create a model to support their work long ago. Defendants could have developed their own hypothesis, tested that hypothesis, and then compared the outcome to the work of the State. Instead, Defendants and their experts have apparently opted to wait to gather data and perform their analysis until after the State's non-damages expert disclosures were made. This was a poor strategic decision. But a poor strategic decision certainly does not rise to the level of "good cause."

e. Aquatic ecology experts

Defendants request a 9½-month extension (to May 30, 2009) to produce the expert reports of Mr. James Chadwick and other unnamed "supporting" experts. This extension is 44 days after the discovery cut-off in the case and the date for filing dispositive motions, thereby severely prejudicing the State in its trial preparations. Moreover, adding to the prejudice, May 30, 2009, is a Saturday, and therefore the State would likely not receive the materials until Monday, June 1, 2009. Yet further, it is also important that while Defendants have identified

[17] This is the sequencing argument that Defendants opposed and the Court rejected when the State sought additional time.

Mr. Chadwick, it is unclear how many other experts they intend to disclose or how many expert reports will be provided. *See* Defendants' Motion, p. 18 ("Defendants have retained a team of leading aquatic ecologists to address these issues.") (emphasis added). Granting Defendants' request with respect to only one expert and one expert report would be prejudicial. However, whereas in the instant case there is an unstated unknown quantity of experts[18] and expert work that will be produced, Defendants' request poses an unreasonable and undue hardship on the State.

It has been no secret that the State has claimed natural resource injuries which include injuries to the rivers and streams in the IRW. *See, e.g.,* DKT #1215. Defendants have, to date, apparently not conducted any independent sampling of their own or even an evaluation of the State's data. Having made that strategic decision, Defendants should not be allowed to claim that they will be prejudiced if not now given time to conduct their own sampling and evaluation of data that was produced beginning in February, 2007.

C. The requested extensions would unfairly prejudice the State

A month ago, when the State was seeking a mere one- to two-week extension to the disclosure deadline for a handful of its experts, Defendants pointed out that "[t]his Court has indicated on several occasions . . . that the deadlines in its Scheduling Order for expert reports are firm." *See* DKT #1704 (emphasis added). Defendants are now singing a very different tune than they were only a month ago. Defendants are now seeking extraordinary extensions for the disclosure of their experts, with the requested extensions ranging from two months to as long as 9½ months. Granting such a request would unfairly prejudice the State.

---

[18] Even if Mr. Chadwick is ultimately the only expert identified by Defendants, the State would be entitled to depose anyone on his team regarding the methodology that was employed and the data that was relied upon.

Defendants wholly ignore the obvious prejudice that the unilateral compression of the remaining schedule would cause the State. Indeed, Defendants go so far as to incorrectly state in their Motion, p. 2, that "[t]his extension would not alter the other deadlines in the Court's scheduling order." As Defendants argued several months ago in response to the State's initial request for mutual extensions of the non-damages expert disclosure deadlines:

> The proposed changes, therefore, simply compresses the balance of the litigation schedule, shrinking by four months the time that Defendants have to digest Plaintiffs' [sic] expert case, and then prepare . . . their dispositive motions, due in April 2009, any Motions in Limine, due in July 2009, and finally to respond at trial, in September 2009. The net effect of Plaintiffs' [sic] request, therefore, would be only to deprive Defendants of four additional months in which to prepare to respond to Plaintiffs' [sic] scientific case.

DKT #1652. Defendants' argument is even more applicable here.

First, because Defendants' request for extensions is unilateral rather than mutual, the prejudice of the compressed timelines falls <u>entirely</u> on the State. Under Defendants' proposal, the State will get two to 9½ fewer months to prepare its reply to Defendants' defenses, while Defendants -- having strategically waited to request their unilateral extensions until after the State made its disclosures -- will get the full measure of time to prepare their defenses.

Second, contrary to their suggestion, Defendants' requested extensions could not but affect the remainder of the Scheduling Order. Defendants' request for extensions runs as late as May 30, 2009. This date is not only <u>after</u> the date for exchange of fact witness lists (February 19, 2009), <u>after</u> the discovery cut-off date (April 16, 2009), and <u>after</u> the date for filing dispositive motions (May 18, 2009), but also only a day before the date for exchanging exhibits and deposition designations (June 1, 2009) and only a month before the date for filing motions in limine (July 6, 2009).

As Defendants argued just last month when the State was seeking a mere one- to two-week extensions for a handful of its experts:

> The Court should remain firm with the deadlines in the case at this stage, or else other deadlines will have to be moved and the domino effect will render the Scheduling Order meaningless, and the course of the case will lack the necessary predictability for proper preparation and fairness for both sides.

DKT #1704. Defendants not only are apparently willing to run away from their previous hard-line statements on the issue, but also appear to view fairness as a one-way street traveling only in their direction. In sum, any extension of Defendants' non-damages expert disclosure deadline would be fundamentally unfair to the State.

V. Conclusion

WHEREFORE, in light of the foregoing, "Defendants' Joint Motion for Additional Time to Produce Expert Reports" [DKT #1722] should be denied in its entirety.

Respectfully Submitted,

W.A. Drew Edmondson OBA # 2628
ATTORNEY GENERAL
Kelly H. Burch OBA #17067
J. Trevor Hammons OBA #20234
Tina Lynn Izadi OBA #17978
Daniel P. Lennington OBA #21577
ASSISTANT ATTORNEYS GENERAL
State of Oklahoma
313 N.E. 21st St.
Oklahoma City, OK 73105
(405) 521-3921

/s/ Richard T. Garren
M. David Riggs OBA #7583
Joseph P. Lennart OBA #5371
Richard T. Garren OBA #3253
Sharon K. Weaver OBA #19010
Robert A. Nance OBA #6581
D. Sharon Gentry OBA #15641
David P. Page OBA #6852
RIGGS, ABNEY, NEAL, TURPEN,
ORBISON & LEWIS
502 West Sixth Street
Tulsa, OK 74119
(918) 587-3161

Louis W. Bullock OBA #1305
Robert M. Blakemore OBA 18656
BULLOCK, BULLOCK & BLAKEMORE
110 West Seventh Street Suite 707
Tulsa OK 74119
(918) 584-2001

Frederick C. Baker
(admitted *pro hac vice*)
Lee M. Heath
(admitted *pro hac vice)*
Elizabeth C. Ward
(admitted *pro hac vice*)
Elizabeth Claire Xidis
(admitted *pro hac vice*)
MOTLEY RICE, LLC
28 Bridgeside Boulevard

Mount Pleasant, SC 29465
(843) 216-9280

William H. Narwold
(admitted *pro hac vice*)
Ingrid L. Moll
(admitted *pro hac vice)*
MOTLEY RICE, LLC
20 Church Street, 17th Floor
Hartford, CT 06103
(860) 882-1676

Jonathan D. Orent
(admitted *pro hac vice)*
Michael G. Rousseau
(admitted *pro hac vice)*
Fidelma L. Fitzpatrick
(admitted *pro hac vice)*
MOTLEY RICE, LLC
321 South Main Street
Providence, RI 02940
(401) 457-7700

Attorneys for the State of Oklahoma

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of June, 2008, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	fc_docket@oag.state.ok.us
Kelly H. Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
J. Trevor Hammons, Assistant Attorney General	trevor_hammons@oag.state.ok.us
Tina Lynn Izadi, Assistant Attorney General	tina_izadi@oag.state.ok.us
Daniel P. Lennington, Assistant Attorney General	daniel.lennington@oag.ok.gov
M. David Riggs	driggs@riggsabney.com
Joseph P. Lennart	jlennart@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Robert A. Nance	rnance@riggsabney.com
D. Sharon Gentry	sgentry@riggsabney.com
David P. Page	dpage@riggsabney.com

RIGGS, ABNEY, NEAL, TURPEN, ORBISON & LEWIS

Louis Werner Bullock lbullock@bullock-blakemore.com
Robert M. Blakemore bblakemore@bullock-blakemore.com
BULLOCK, BULLOCK & BLAKEMORE

Frederick C. Baker fbaker@motleyrice.com
Lee M. Heath lheath@motleyrice.com
Elizabeth C. Ward lward@motleyrice.com
Elizabeth Claire Xidis cxidis@motleyrice.com
William H. Narwold bnarwold@motleyrice.com
Ingrid L. Moll imoll@motleyrice.com
Jonathan D. Orent jorent@motleyrice.com
Michael G. Rousseau mrousseau@motleyrice.com
Fidelma L. Fitzpatrick ffitzpatrick@motleyrice.com
MOTLEY RICE, LLC
Counsel for State of Oklahoma

Robert P. Redemann rredemann@pmrlaw.net
Lawrence W. Zeringue lzeringue@pmrlaw.net
David C. Senger dsenger@pmrlaw.net
PERRINE, MCGIVERN, REDEMANN, REID, BARRY & TAYLOR, P.L.L.C.

Robert E Sanders rsanders@youngwilliams.com
Edwin Stephen Williams steve.williams@youngwilliams.com
YOUNG WILLIAMS P.A.
Counsel for Cal-Maine Farms, Inc and Cal-Maine Foods, Inc.

John H. Tucker jtucker@rhodesokla.com
Theresa Noble Hill thill@rhodesokla.com
Colin Hampton Tucker ctucker@rhodesokla.com
Leslie Jane Southerland ljsoutherland@rhodesokla.com
RHODES, HIERONYMUS, JONES, TUCKER & GABLE

Terry Wayen West terry@thewestlawfirm.com
THE WEST LAW FIRM

Delmar R. Ehrich dehrich@faegre.com
Bruce Jones bjones@faegre.com
Krisann C. Kleibacker Lee kklee@faegre.com
Todd P. Walker twalker@faegre.com
FAEGRE & BENSON, LLP

Dara D. Mann dmann@mckennalong.com
MCKENNA, LONG & ALDRIDGE LLP
Counsel for Cargill, Inc. & Cargill Turkey Production, LLC

James Martin Graves jgraves@bassettlawfirm.com
Gary V Weeks gweeks@bassettlawfirm.com
Paul E. Thompson, Jr. pthompson@bassettlawfirm.com
Woody Bassett wbassett@bassettlawfirm.com
K. C. Dupps Tucker kctucker@bassettlawfirm.com
BASSETT LAW FIRM

George W. Owens gwo@owenslawfirmpc.com
Randall E. Rose rer@owenslawfirmpc.com
OWENS LAW FIRM, P.C.
Counsel for George's Inc. & George's Farms, Inc.

A. Scott McDaniel smcdaniel@mhla-law.com
Nicole Longwell nlongwell@mhla-law.com
Philip Hixon phixon@mhla-law.com
Craig A. Merkes cmerkes@mhla-law.com
MCDANIEL, HIXON, LONGWELL & ACORD, PLLC

Sherry P. Bartley sbartley@mwsgw.com
MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC
Counsel for Peterson Farms, Inc.

John Elrod jelrod@cwlaw.com
Vicki Bronson vbronson@cwlaw.com
P. Joshua Wisley jwisley@cwlaw.com
Bruce W. Freeman bfreeman@cwlaw.com
D. Richard Funk rfunk@cwlaw.com
CONNER & WINTERS, LLP
Counsel for Simmons Foods, Inc.

Stephen L. Jantzen sjantzen@ryanwhaley.com
Paula M. Buchwald pbuchwald@ryanwhaley.com
Patrick M. Ryan pryan@ryanwhaley.com
RYAN, WHALEY, COLDIRON & SHANDY, P.C.

Mark D. Hopson mhopson@sidley.com
Jay Thomas Jorgensen jjorgensen@sidley.com
Timothy K. Webster twebster@sidley.com
Thomas C. Green tcgreen@sidley.com
Gordon D. Todd gtodd@sidley.com
SIDLEY, AUSTIN, BROWN & WOOD LLP

Robert W. George robert.george@tyson.com
L. Bryan Burns bryan.burns@tyson.com
TYSON FOODS, INC

Michael R. Bond michael.bond@kutakrock.com
Erin W. Thompson erin.thompson@kutakrock.com
KUTAK ROCK, LLP
Counsel for Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., & Cobb-Vantress, Inc.

R. Thomas Lay rtl@kiralaw.com
KERR, IRVINE, RHODES & ABLES

Jennifer Stockton Griffin jgriffin@lathropgage.com
David Gregory Brown
LATHROP & GAGE LC
Counsel for Willow Brook Foods, Inc.

Robin S Conrad rconrad@uschamber.com
NATIONAL CHAMBER LITIGATION CENTER

Gary S Chilton gchilton@hcdattorneys.com
HOLLADAY, CHILTON AND DEGIUSTI, PLLC
Counsel for US Chamber of Commerce and American Tort Reform Association

D. Kenyon Williams, Jr. kwilliams@hallestill.com
Michael D. Graves mgraves@hallestill.com
HALL, ESTILL, HARDWICK, GABLE, GOLDEN & NELSON
Counsel for Poultry Growers/Interested Parties/ Poultry Partners, Inc.

Richard Ford richard.ford@crowedunlevy.com
LeAnne Burnett leanne.burnett@crowedunlevy.com
CROWE & DUNLEVY
Counsel for Oklahoma Farm Bureau, Inc.

Kendra Akin Jones, Assistant Attorney General Kendra.Jones@arkansasag.gov
Charles L. Moulton, Sr Assistant Attorney General Charles.Moulton@arkansasag.gov
Counsel for State of Arkansas and Arkansas National Resources Commission

Mark Richard Mullins richard.mullins@mcafeetaft.com

MCAFEE & TAFT
Counsel for Texas Farm Bureau; Texas Cattle Feeders Association; Texas Pork Producers Association and Texas Association of Dairymen

Mia Vahlberg mvahlberg@gablelaw.com
GABLE GOTWALS

James T. Banks jtbanks@hhlaw.com
Adam J. Siegel ajsiegel@hhlaw.com
HOGAN & HARTSON, LLP
Counsel for National Chicken Council; U.S. Poultry and Egg Association & National Turkey Federation

John D. Russell jrussell@fellerssnider.com
FELLERS, SNIDER, BLANKENSHIP, BAILEY & TIPPENS, PC

William A. Waddell, Jr. waddell@fec.net
David E. Choate dchoate@fec.net
FRIDAY, ELDREDGE & CLARK, LLP
Counsel for Arkansas Farm Bureau Federation

Barry Greg Reynolds reynolds@titushillis.com
Jessica E. Rainey jrainey@titushillis.com
TITUS, HILLIS, REYNOLDS, LOVE, DICKMAN & MCCALMON

Nikaa Baugh Jordan njordan@lightfootlaw.com
William S. Cox, III wcox@lightfootlaw.com
LIGHTFOOT, FRANKLIN & WHITE, LLC
Counsel for American Farm Bureau and National Cattlemen's Beef Association

Also on this 30th day of June, 2008 I mailed a copy of the above and foregoing pleading to:

David Gregory Brown
Lathrop & Gage LC
314 E HIGH ST
JEFFERSON CITY, MO 65101

Thomas C Green

Sidley Austin Brown & Wood LLP
1501 K ST NW
WASHINGTON, DC 20005

Dustin McDaniel
Justin Allen
Office of the Attorney General (Little Rock)
323 Center St, Ste 200
Little Rock, AR 72201-2610

Steven B. Randall
58185 County Road 658
Kansas, Ok 74347

Cary Silverman
Victor E Schwartz
Shook Hardy & Bacon LLP (Washington DC)
600 14TH ST NW STE 800
WASHINGTON, DC 20005-2004

George R. Stubblefield
HC 66, Box 19-12
Proctor, Ok 74457

C Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 NORTH CLASSEN
OKLAHOMA CITY, OK 73118

/s/ Richard T. Garren
Richard T. Garren