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

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,	)	
Plaintiff,	)	
vs.	)	**05-CV-0329 GKF-SAJ**
TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS, INC., AVIAGEN, INC., CAL-MAINE FOODS, INC., CAL-MAINE FARMS, INC., CARGILL, INC., CARGILL TURKEY PRODUCTION, LLC, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., SIMMONS FOODS, INC., and WILLOW BROOK FOODS, INC.,	)	
Defendants.	)	
TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS, INC., GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., SIMMONS FOODS, INC., and WILLOW BROOK FOODS, INC.,	)	
Third Party Plaintiffs,	)	
vs.	)	
City of Tahlequah, *et al.*,	)	
Third Party Defendants.	)	

AMENDED FOURTH SUPPLEMENTAL RESPONSES OF DEFENDANT, PETERSON FARMS, INC. TO FIRST SET OF INTERROGATORIES AND FIRST REQUEST FOR PRODUCTION OF DOCUMENTS BY PLAINTIFFS

Defendant, Peterson Farms, Inc. ("Peterson Farms"), respectfully submits the following Amended Third Supplemental Responses to Plaintiffs' First Set of Interrogatories and Requests for Production of Documents, pursuant to Federal Rules of Civil Procedure 26 and 33; the Court's Order of December 7, 2007 (Dkt. #1409); and the Court's Opinion and Order of May 20, 2008 (Dkt. #1710).

GENERAL OBJECTIONS:

1. Peterson Farms objects to, and does not agree to, or agree to subject itself to, the arbitrary and extraordinary "definitions" described by the Plaintiffs to certain terms as set forth in their First Set of Interrogatories and Requests for Production of Documents propounded to Peterson Farms. To the extent that such terms appear in the plaintiffs' First Set of Interrogatories and Requests for Production of Documents and are in excess of the requirements of the Federal Rules of Civil Procedure, Peterson Farms instead ascribes to the ordinary, every day and reasonably, commonly understood meanings which apply to such terms, and also which comply with the Federal Rules of Civil Procedure. Peterson Farms objects to the definitions to the extent they assume facts not in evidence or related to facts or contentions in dispute in the action. Peterson Farms also specifically objects to the definition of "Defendant" as it is overly broad and includes within its scope "Contract Growers." On July 21, 2008, Peterson Farms sold certain of its assets, including but not limited to its feed mill and processing plant (both of which are located outside the IRW), and terminated its grower contracts. Peterson submits these answers and responses for itself and not for any other person or entity, including any person or entity who formerly raised poultry under contract with Peterson Farms.

2. Each of the following responses is made subject to and without waiving any objections Peterson Farms may have with respect to the subsequent use of these responses or the documents identified pursuant thereto, and Peterson Farms specifically reserves: (a) all questions as to the privilege, relevancy, materiality, and admissibility of said responses or documents; (b) the right to object to the uses of said responses or the documents identified pursuant thereto in any lawsuit or proceeding on any or all of the foregoing grounds or on any other proper ground; (c) the right to object on any and all proper grounds, at any time, to other discovery procedures involving or related to said responses or documents; and (d) the right, at any time, upon proper showing, to revise, correct or clarify any of the following responses.

3. Peterson Farms objects to each and every interrogatory and request to the extent it seeks or calls for information or the identification of documents which are protected from discovery and privileged by reason of: (a) the attorney-client communication privilege; (b) the "work product" doctrine; (c) the "trial preparation" doctrine; (d) the joint defense or "co-party" privilege; or (e) any other applicable discovery rule or privilege.

4. Peterson Farms objects to each and every interrogatory and request to the extent it seeks information or the identification of documents concerning any claims or occurrences other than the claims and occurrences set forth in Plaintiffs' First Amended Complaint for which Plaintiffs request relief.

5. Peterson Farms objects to each interrogatory and request to the extent it seeks or relates to information or the identification of documents which are available to the public, and thus, equally available to Plaintiffs.

6. Peterson Farms objects to each request to the extent it seeks or relates to information or the identification of documents which are protected as proprietary and confidential trade secrets.

7. Peterson also incorporates as though fully restated herein all objections and limitations to responses made by every other defendant to the corresponding interrogatories and requests for production.

8. The foregoing objections apply to each and every response herein. By specifically incorporating individual General Objections in any response, Peterson Farms expressly does not waive the application of the remainder of the General Objections to such response. Subject to these objections and subject to any additional objections set forth hereinafter, Peterson Farms responds to Plaintiffs' First Interrogatories and Requests for Production as follows:

SUPPLEMENTAL RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: For each of your poultry growing operations in the IRW since 1952, please provide the following information:

a. name and physical location of the operation;

b. dates of operation;

c. type of operation (breeder, broiler, layer, etc.);

d. number of birds (aggregated annually) at each location; and,

e. name of the owner and operator.

SUPPLEMENTAL RESPONSE: Peterson Farms objects to Interrogatory No. 1 as it is overly broad in scope, and is therefore overly burdensome. Peterson does not

possess information sufficient to answer this interrogatory as it seeks information regarding operations extending back in time for 54 years. Furthermore, Peterson Farms objects to the time period of this interrogatory as it seeks information that is neither relevant nor is it likely to lead to the discovery of admissible evidence. In addition, Peterson Farms maintains its records based on its operational and business needs and did not attempt to maintain grower information by watershed until 2003.

Subject to and without waiving the foregoing specific objections and its General Objections, Peterson Farms refers Plaintiffs to its former contract growers' files (for contract growers within the Illinois River Watershed), which it has previously produced for the time period of 2002 to the present, in addition to the additional limited growers' files produced for periods prior to 2002. Peterson Farms also refers Plaintiffs to the tables attached as Table "A" and Table "B" to its Second Supplemental Response to Interrogatory No. 1, which are incorporated herein by reference, containing the requested information for independent farmers formerly under contract with Peterson Farms for poultry production who are believed to be within the Illinois River Watershed.

In addition, Peterson Farms refers Plaintiffs to Table "C" and Table "D", which were attached to its Third Supplemental Response to Interrogatory No. 1 and incorporated herein by reference, containing a summary of poultry production from September 1985 (which is the oldest electronically stored information readily accessible to Peterson Farms) through May 2008. These additional Tables were submitted in satisfaction of Court's Opinion and Order of May 20, 2008 (Dkt. #1710).

Table "C" contains a summary of poultry production for those growers previously identified in Table "A" and Table "B" for the aforementioned time span;[1] the summary poultry production in Table "C" supplements, replaces and supercedes the poultry production information in Table "B". The poultry growers whose production numbers are summarized in Table "C" were generally identified as contract growers who were under contract within the 5-year limitation previously applicable to discovery of operational matters.

Table "D" generally contains a summary of poultry production for additional growers believed to be within the Illinois River Watershed outside the 5-year limitation previously applicable to discovery of operational matters.[2] These additional growers were identified through a manual process relying on a list of grower names and the memories and recollections of Peterson Farms' former employees. Apart from these memories and recollections, the location of the farms cannot be verified because, upon its best knowledge, Peterson Farms does not possess or maintain readily accessible information for these farms, whether in hard copy or electronic format. Many of the operations whose poultry production numbers are summarized in Table "D" may be outside the Illinois River Watershed. As such, the poultry production in Table "D" is inherently unreliable. Subject to and without waiving the foregoing, the poultry production numbers in Table "D" are believed to be separate from and in addition to the production information in Table "C".

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[1] Table "C" is subdivided into Table "C-1" (broilers), Table "C-2" (hens) and Table "C-3".

[2] Table "D" is likewise subdivided into Table "D-1" (broilers), Table "D-2" (hens) and Table "D-3".

Subject to and without waiving the foregoing, the operations and other information in Table "A" through Table "D" have been identified to the best of Peterson Farms' current knowledge and ability and are subject to the additional qualifications and caveats discussed hereinafter.

With regard to the capacity figures in Table "A", Peterson Farms periodically recalculated or adjusted poultry house capacity based on factors such as, but not limited to, the size of chicken in production, advances in poultry house technology, improvements in poultry house ventilation, increase in the number of poultry houses, retrofitting of existing facilities, and replacement of outdated poultry houses with modern facilities. The capacity figures in the "7/25/2007" column correspond with the capacity figures in the report marked Exhibit "1B" at the Rule 30(b)(6) deposition of Kirk Houtchens on July 26, 2007.

With regard to the chicken production figures in Table "B" through Table "D", Peterson Farms maintains that, to the extent these figures are used to calculate or estimate the production and/or land application of poultry litter within the Illinois River Watershed, the information is inherently unreliable and, therefore, it objects to the admissibility of any such evidence for any claim before the Court. The summary poultry production figures in Table "C" and Table "D", which were compiled from operational information, represent Peterson Farms' best estimate as to the number of chickens placed in and removed from the respective operations during the identified fiscal years beginning October 1 and ending September 30, but Peterson Farms cannot certify the accuracy of the chicken production numbers for the Illinois River Watershed for reasons heretofore and hereafter discussed.

As noted above, Peterson Farms did not begin categorizing, or attempting to categorize, growers by watershed until 2003, rendering chicken production figures for growers who ceased operations prior to 2003 less reliable than more current figures. The identification of any growers who terminated their relationship with Peterson Farms prior to the period in which it began attempting to designate the watershed of the growers as a part of its regular business practice were identified through a manual process based primarily on the recollections of former long-term employees in Peterson Farms' live production department. Therefore, the identification of these growers is subject to any and all potential errors inherent in this method of identification, including but not limited to mistaken or erroneous memories resulting in omission of growers who may have had operations in the Illinois River Watershed.

Furthermore, with regard to the information contained in Table "D", a similar process was employed to identify additional historic, inactive growers believed to be within the Illinois River Watershed outside the 5-year limitation previously applicable to discovery of operational matters. However, with regard to these additional inactive growers, Peterson Farms did not have any means of confirming the location of the grower, apart from the recollections of former long-term employees. These additional historic, inactive growers were identified from a list of names without the aid or availability of a farm address, driving instructions, GIS information or any other information that may have allowed Peterson Farms to confirm that the additional inactive growers were, in fact, within the Illinois River Watershed. As such, the poultry production information contained in Table "D" is subject to greater error and, thus, less reliable than the information in Table "C".

Similarly, many of the operations are located on or near the boundary of the Illinois River Watershed and an adjacent watershed, leaving them subject to removal from (or addition to) the chicken production figures in Table "C" and/or Table "D" were Peterson Farms able to confirm the location of the latter operations. The boundaries of the Illinois River Watershed are uncertain and dependent on the entity defining the watershed. For example, as Plaintiffs are aware, a poultry inspector from ODAFF has previously identified operations formerly under contract with Peterson Farms as being located in an adjacent watershed that Peterson Farms believed were in the Illinois River Watershed. Peterson Farms cannot possibly verify that the criteria and boundaries it used beginning in 2003 to designate a particular grower's watershed location are the same as those used, for instance, either by ODAFF for its regulatory purposes or by Plaintiffs in defining the Illinois River Watershed in their First Amended Complaint.

Furthermore, the chicken production figures in Table "C" and Table "D" do not take into account the size of the chicken in production during the respective periods, the age of the chickens at the time of death or removal from an operation, the length of time a given flock was in the particular operation, the mortality in the particular operation, the period in which a flock was in the care of a particular operation, the operations' respective changes in capacity, the operations' respective cake-out or litter clean-out occurrences, the amount of litter removed from an operation, or the ultimate destination of poultry litter removed from any operation, which could be either within or outside the Illinois River Watershed. Similarly, the chicken production figures in Table "C" and Table "D" cannot reliably be used to estimate or calculate the number of chicken/head per day in a particular operation,

the rate at which an operation experienced mortality among chickens initially placed in the operation, or the weight of the chicken at the time of death or removal from the operation.

In addition, in isolated incidences, the figures reflected on Table "C" and Table "D" may be in error for other reasons. As previously disclosed, the suspected error in the figures were contained in the "In 2004" and "Out 2004" column for Lee Breeder Farm on the hen portion (B-2) of Table "B". The "In 2004" figure of 27,395 was believed to be overstated by an amount equal to the "Out 2004" figure of 9,437; the transfer "out" represented by the 9,437 figure was an internal transfer specific to Lee Breeder Farm, resulting in double counting of these birds in the "in" figure. Upon information and belief, the accurate "In 2004" figure for Lee Breeder Farm should be the "In 2004" figure of 27,395 less the "Out 2004" figure of 9,437, or 17,958. These suspected errors are also contained within the summary information in Table "C". Furthermore, there is another issue in the Table C-2 compared with Table B-2; again, this difference is related to the poultry production numbers of Lee Breeder Farm. Upon information and belief, this difference is related to poultry numbers previously omitted for Lee Breeder Farm for "In 2004" and "Out 2004" related to an inadvertently omitted department. Consequently, the numbers in Table C-2 are higher than the "In 2004" and "Out 2004" reported for Table B-2 by 8055 and 8450, respectively. Although not believed to be material, the Tables may also contain undetected mathematical transpositions or related errors.

Therefore, subject to the foregoing objections, qualifications and caveats, the best estimate in Table "C" and Table "D" may be an over-estimate or under-estimate based on a number of factors of which a representative list only is discussed herein; these numerous

factors, including but not limited to the aforementioned qualifications and caveats, constitute the "margin or error" for the bird production figures in Table "C" and Table "D".

Respectfully submitted,

By /s/ *Philip D. Hixon*

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CERTIFICATE OF SERVICE

I certify that on the 15th day of October, 2008, I electronically transmitted the attached document to ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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/s/ Philip D. Hixon

VERIFICATION

STATE OF ARKANSAS)
) ss.
COUNTY OF BENTON)

Blake Evans, being first duly sworn on oath, states that he is employed with Peterson Farms, Inc , that he does not have personal knowledge of all facts recited in the foregoing AMENDED FOURTH SUPPLEMENTAL RESPONSES OF DEFENDANT, PETERSON FARMS, INC. TO FIRST SET OF INTERROGATORIES, nor does any one current or former employee of Peterson Farms, Inc have personal knowledge of all the facts recited in the foregoing answers, but that the information has been gathered by and from current and former employees of Peterson Farms, Inc ; that the responses are true to the best of his belief based on the information supplied by such employees. I am duly authorized to sign this Verification on behalf of Peterson Farms, Inc.; that I have read the answers to the foregoing Interrogatories and that said responses are true and correct to the best of my knowledge and belief, and that I have executed this Verification as my free and voluntary act and deed representing the same

Blake Evans

Signed and sworn to before me on the 14th day of October, 2008 by **Blake Evans**.

Notary Public

My Commission Expires: January 22, 2018