**IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT**

STATE OF OKLAHOMA EX REL. GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma, et al., Plaintiffs-Appellees/Cross-Appellants, v. CAL-MAINE FOODS, INC., Defendant-Appellant/Cross-Appellee, and TYSON FOODS, INC., et al., Defendants/Cross-Appellees.	No. 26-5000 (D.C. No. 4:05-CV-00329-GKF-SH) (N.D. Okla.)
STATE OF OKLAHOMA EX REL. GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma, et al., Plaintiffs-Appellees/Cross-Appellants, v. CARGILL, INC., et al.,	No. 26-5001 (D.C. No. 4:05-CV-00329-GKF-SH) (N.D. Okla.)

Defendants-Appellants/Cross-Appellees,

and

TYSON FOODS, INC., et al.,

Defendants/Cross-Appellees.

STATE OF OKLAHOMA EX REL. GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma, et al.,

Plaintiffs-Appellees/Cross Appellants,

v.

TYSON FOODS, INC., et al.,

Defendants-Appellants/Cross-Appellees,

and

CAL-MAINE FOODS, INC., et al.,

Defendants/Cross-Appellees.

No. 26-5002
(D.C. No. 4:05-CV-00329-GKF-SH)
(N.D. Okla.)

STATE OF OKLAHOMA EX REL. GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma, et al.,

No. 26-5003
(D.C. No. 4:05-CV-00329-GKF-SH)
(N.D. Okla.)

Plaintiffs-Appellees/Cross-Appellants,

v.

PETERSON FARMS, INC.,

Defendant-Appellant/Cross Appellees,

and

TYSON FOODS, INC., et al.,

Defendants/Cross-Appellees.

STATE OF OKLAHOMA EX REL. GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma, et al.,

Plaintiffs-Appellees/Cross-Appellants,

v.

SIMMONS FOODS, INC.,

Defendant-Appellant/Cross-Appellee,

and

TYSON FOODS, INC., et al.,

Defendants/Cross-Appellees.

No. 26-5004
(D.C. No. 4:05-CV-00329-GKF-SH)
(N.D. Okla.)

STATE OF OKLAHOMA EX REL. GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma, et al., Plaintiffs-Appellees/Cross Appellants, v. GEORGE'S, INC., et al., Defendants-Appellants/Cross-Appellees, and TYSON FOODS, INC., et al., Defendants/Cross-Appellees.	No. 26-5005 (D.C. No. 4:05-CV-00329-GKF-SH) (N.D. Okla.)
STATE OF OKLAHOMA EX REL. GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma, et al., Plaintiffs-Appellants v. TYSON FOODS, INC., et al., Defendants-Appellees.	No. 26-5010 (D.C. No. 4:05-CV-00329-GKF-SH) (N.D. Okla.)

STATE OF OKLAHOMA EX REL. GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma, et al., Plaintiffs-Appellees, v. TYSON FOODS, INC., et al., Defendants-Appellants. and CAL-MAINE FOODS, INC., et al., Defendants.	No. 26-5039 (D.C. No. 4:05-CV-00329-GKF-SH) (N.D. Okla.)
STATE OF OKLAHOMA EX REL. GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma, et al., Plaintiffs-Appellees, v. GEORGE'S, INC., et al., Defendants-Appellants, and TYSON FOODS, INC., et al., Defendants.	No. 26-5043 (D.C. No. 4:05-CV-00329-GKF-SH) (N.D. Okla.)

STATE OF OKLAHOMA EX REL. GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma, et al., Plaintiffs-Appellees, v. PETERSON FARMS, INC., Defendant-Appellant, and TYSON FOODS, INC., et al., Defendants.	No. 26-5044 (D.C. No. 4:05-CV-00329-GKF-SH) (N.D. Okla.)
STATE OF OKLAHOMA EX REL. GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma, et al., Plaintiffs-Appellees, v. CARGILL, INC., et al., Defendants-Appellants, and TYSON FOODS, INC., et al., Defendants.	No. 26-5045 (D.C. No. 4:05-CV-00329-GKF-SH) (N.D. Okla.)

STATE OF OKLAHOMA EX REL. GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma, et al., Plaintiffs-Appellants/Cross-Appellees, v. TYSON FOODS, INC., et al., Defendants-Appellees/Cross-Appellants.	No. 26-5065 (D.C. No. 4:05-CV-00329-GKF-SH) (N.D. Okla.)

UNOPPOSED JOINT MOTION BY THE STATE OF OKLAHOMA AND APPELLANTS TO VACATE JUDGMENT

After two decades of hard-fought litigation, two trials, and now twelve pending appeals and cross-appeals, the parties have finally reached an amicable resolution. Their settlement brings immediate relief to the Illinois River Watershed and removes the uncertainty of protracted appellate proceedings that would otherwise continue to drain party and judicial resources. And it obviates the need for this Court to adjudicate a dozen appeals presenting a thicket of complex and novel legal questions.

But this carefully crafted compromise cannot coexist with the existing judgment and its inquisitorial special-master regime. The State of Oklahoma and the appellant companies thus stand united in their view that vacatur is in the best interests of everyone—the parties, the courts, and the public. The parties therefore jointly move this Court to exercise its broad equitable authority to vacate the judgment below and remand so that the parties may finally and forever dismiss this litigation.

BACKGROUND

I. This litigation

This case began in 2005, when Oklahoma state officials sued a group of poultry companies for allegedly contaminating the Illinois River Watershed. *See* Add.039–40. According to the complaint, the alleged injury stems from "poultry litter": a mix of poultry manure and bedding material that farmers use to fertilize their fields. *See* Add.046. The State asserted that the poultry companies who employ independent farmers to raise their birds are vicariously liable for this alleged environmental harm. Add.052. The case went to trial in late 2009 and, after a thirteen-year delay, the court held the poultry companies liable in January 2023. Add.039.

The parties spent most of 2023 trying to settle. These settlement efforts included multiple mediation sessions with former Tenth Circuit Judge Deanell Reece Tacha, along with countless other in-person meetings and written exchanges. *E.g.*, Add.056; Add.067. Despite their best efforts, the parties were unable to reach an agreement, and negotiations continued into 2024 and 2025. "[R]igorous discussions" were still ongoing when the district court issued its judgment in December 2025. Add.067; *see* Add.069.

The judgment gave both sides further reason to settle. It awarded the State some—but not all—of the remedies it sought. *Compare* Add.099–100, *with id.* Add.094 (reducing civil penalties below State's request). The poultry companies, in turn, avoided some civil penalties but were saddled with an open-ended special-master regime funded entirely at their expense. Add.094. Critically, the judgment tasks the court-appointed special master with independently "monitoring compliance with th[e] judgment" and "report[ing] … to the court … all … violations" of the judgment. Add.079–80.

The parties quickly concluded that a different solution was warranted. Soon after the judgment issued, agricultural organizations criticized it for establishing excessive governmental oversight. *See Statement: OKFB disappointed by court's findings in decades-long poultry lawsuit*, Okla. Farm Bureau (Dec. 23, 2025), bit.ly/OKFB_Statement. And local farmers and small businesses voiced concerns over the judgment's effect on their work. *E.g.*, Add.106; Add.113. Understanding the angst of farmers and seeking a balanced solution that protects natural resources while supporting the agricultural community, the State agreed to a stay of the judgment's monetary portions, effectively pausing all environmental remediation pending appeal. Add.128. The judgment's ban on litter application in the watershed, however, remains in effect.

The parties then noticed appeals, triggering an expensive and risky new phase of litigation. From the outset, the appeals promised to be extraordinarily complex. The parties, joined by a group of *amici*, initially battled over the companies' motion for a stay pending appeal. *See* Dkts. 23, 29, 32; *see also* Dkt. 38 (denying stay). And as merits briefing began in earnest, it became apparent just how intricate these appeals would be: they'll raise over a dozen legal issues, many involving a trial record spanning tens of thousands of pages and novel questions of Oklahoma and federal law. (*E.g.*, Does the Clean Water Act displace the federal common law of nuisance as applied to interstate water pollution from nonpoint sources? May a district court, consistent with due process and equity, enter an injunction after taking no action in a case for 13 years? Is issuing a multistep injunction administered by a special master with a 30-year term within the equitable authority conferred on federal courts by the Judiciary Act of 1789?)

In light of that complexity, the Court afforded the parties up to 10 briefs and a total of 176,640 words to make their arguments, *see* Dkt. 58—more than three and a half times the length of a standard cross-appeal (and that's ignoring the half dozen anticipated amicus briefs), *see* Fed. R. App. P. 28.1(e)(2). Pressing forward with the appeals would mean millions in legal fees for each side, not to mention the possibility that favorable rulings could be reversed.

These realities finally led the State and four of the six defendants (George's, Tyson, Cargill, and Peterson) to agree upon proposed consent judgments in early 2026. Because these negotiated resolutions could not take effect while the original judgment remained in place, the parties' settlement agreements were expressly conditioned on vacatur of the judgment. The settling parties thus jointly moved the district court for an indicative ruling that it would modify or vacate its judgment under Rule 60(b). *See* Fed. R. Civ. P. 62.1; Fed. R. App. P. 12.1. The district court denied the motion, primarily on the ground that post-settlement vacatur was, in its view, improper under *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership,* 513 U.S. 18 (1994). Add.139, 143–46. The parties to those settlements appealed that denial, too, adding another set of issues for this Court to address on appeal.

II. The agreement

The parties then returned to the bargaining table and negotiated a new agreement. This time, all six defendant companies joined. The agreement has three key provisions.

First, the companies agree to pay a combined $41,671,000 into an "Environmental Relief Fund." Add.003. The State will control the fund, which will be used for "furthering, in accordance with Oklahoma law, environmental stewardship of Oklahoma's scenic waterways" through the Oklahoma Conservation Commission, as well as making "payment of attorneys' fees and/or litigation expenses incurred by the State and/or its outside private attorneys." *Id.*

Second, the companies agree to limit the volume of litter generated on company-owned farms that could be spread on farmland in the watershed. Add.006–10. The companies will seek to impose similar volume limits on poultry litter generated by farmers located in the watershed with whom they have contracts. And these limits grow more stringent over time. Add.007. The companies also agree to impose these limits not only within the Illinois River Watershed itself but also in any "Oklahoma Nutrient Sensitive Watershed" (a term defined in the settlement)—an expansion over the existing judgment. *Id.*

Finally, the parties agree to a series of releases. The state officials agree to "fully, finally, and forever release" the settling companies from all "liabilities and obligations" under "the December 19, 2025 Judgment." Add.017–18. Both parties agree to "release" the farmers with whom the companies had contracted from any liability relating to the litigation. Add.020. And the settling companies promise not to use the settlement as a "basis for any decision not to renew or extend contracts" with the released farmers. *Id.*

This agreement creates a regime that is incompatible with the original judgment. *See* Add.014–15. Accordingly, the parties jointly move to vacate the judgment so they can implement their settlement, dismiss the case, and move forward with payment and remediation.

ARGUMENT

I. Equitable vacatur is warranted.

Appellate courts retain "broad power" under 28 U.S.C. § 2106 to vacate a judgment "'as may be just under the circumstances.'" *Lawrence v. Chater*, 516 U.S. 163, 166 (1996) (per curiam) (quoting 28 U.S.C. § 2106). Section 2106's instruction to grant relief "as may be *just*" is a "hallmark of traditional equitable practice." *Starbucks Corp. v. McKinney*, 602 U.S. 339, 347 (2024) (emphasis added). And "in determining what justice does require," appellate courts must "consider any change, either in fact or in law, which has supervened since the judgment was entered." *Patterson v. Alabama*, 294 U.S. 600, 607 (1935).

The equities here decisively favor vacatur. After years of good-faith negotiations, the parties have reached an agreement that resolves all outstanding issues in this litigation. For starters, the agreement binds *all* defendants—addressing a key concern the district court had in denying the Rule 60(b) motion. Add.147. It also provides the State $41,671,000, which the State may use for immediate environmental relief. And the agreement sets a phased regime limiting litter application in *any* nutrient-sensitive watershed in Oklahoma, giving it a broader scope than the existing judgment. These latter provisions, however, are conditioned on vacatur of the judgment and dismissal of the litigation, because the settlement's remediation and litter-management regime can't exist while the judgment below continues to impose materially different obligations enforced by an inquisitorial special master operating with an unlimited budget.

Should the judgment remain in place, the harm will be significant. The State and the companies will be forced back into complex and protracted litigation with no clear end in sight. That means serious risk and significant expense.

Then there are the costs to the judicial system. *See Hartford Cas. Ins. Co. v. Crum & Forster Specialty Ins. Co.*, 828 F.3d 1331, 1337 (11th Cir. 2016) (public interest "served by settlements" when "judicial resources" are saved); *see also Lawrence*, 516 U.S. at 167 ("conserv[ing]" "scarce" appellate judicial resources is a "virtue[]" of vacatur under § 2106). As this Court recently acknowledged, "this is a complex case with a voluminous record and consolidated cross-appeals." Dkt. 54 at 7. And that's putting it lightly. The twelve pending appeals and cross-appeals would require a panel of this Court to wade through over 500 pages of briefing and volumes of record evidence, and to adjudicate a host of novel and complex issues relating to liability, remedies, and post-judgment relief—not to mention the potential for remand, retrial, and a second round of appeals. The result would be years of additional litigation, at great cost to all involved, just to assess the legality of an expansive and time-consuming injunctive remedy that no one wants.

Vacatur also benefits nonparties and the public writ large. Without vacatur, farmers under contract with the settling companies will remain in limbo—they would receive none of the certainty, liability releases, or contract-renewal protections that settlement affords them. Further litigation also means the judgment might not survive at all, leaving no basis for environmental remediation. And even if the Court were eventually to affirm the existing judgment, that would leave Oklahoma with *less* environmental protection in certain key respects. Namely, it would deny the State immediate remediation funding and adopt a narrower geographic limitation on where litter can be applied. *See* Add.099–100.

It is for all these reasons that the State—the party charged with protection of the watershed—has determined that settlement and vacatur "best serve[] the public interest." Add.003. "[P]rinciples of federalism require that federal courts give 'significant weight'" to such views. *Jackson v. Los Lunas Cmty. Program*, 880 F.3d 1176, 1192 (10th Cir. 2018). And here, Oklahoma has concluded that settlement and vacatur is the right approach to protect the watershed and the public.

Other appellate courts have granted vacatur under far less compelling circumstances. The decision in *Major League Baseball Properties, Inc. v. Pacific Trading Cards, Inc.*, 150 F.3d 149, 152 (2d Cir. 1998), is instructive. The private parties there "needed a vacatur" to end their dispute on a "satisfactory" basis, and "the victor in the district court wanted a settlement as much as … the loser did." *Id.* The Second Circuit ruled those circumstances sufficient to warrant § 2106 vacatur. *Id.* at 152–53. Or take *Hartford Casualty Insurance Co. v. Crum & Forster Specialty Insurance Co.*, 828 F.3d 1331 (11th Cir. 2016). There, the Eleventh Circuit found that circumstances warranted vacatur because (1) the settlement agreement was "expressly conditioned on the District Court's orders being vacated" and (2) "both parties to the settlement desire[d] vacatur because settlement would otherwise be impossible." *Id.* at 1336.

The equities here are even more compelling. If the existing judgment is permitted to continue, it will drain party and judicial resources by perpetuating litigation, saddle nonparties with uncertainty and risk, and offer limited environmental protection and little immediate funding. Vacatur provides an ideal alternative that is "'just under the circumstances,'" *Lawrence*, 516 U.S. at 166 (1996) (quoting 28 U.S.C. § 2106)—one that effectuates the goals of environmental remediation while delivering certainty and avoiding needless expense and delay.

II. *Bancorp* poses no barrier to relief.

A. The Supreme Court's decision in *Bancorp* leaves ample room for equitable vacatur under these circumstances.

In *Bancorp*, the petitioner lost on appeal and sought Supreme Court review, but the parties settled after certiorari was granted, mooting the case. 513 U.S. at 20. The petitioner then asked the Court to vacate the appellate court's judgment—a request the respondent "opposed." *Id.* The Court denied relief because the petitioner had "voluntarily forfeited his legal remedy" and thus "disentitle[d]" himself to equitable vacatur. *Id.* at 25 (citation omitted). The "mere fact" that a settlement had "mooted the case" was not enough to warrant relief under § 2106. *Id.* at 20, 29.

That was especially so because vacatur in that case would have expunged "[j]udicial precedent[]." *Id.* at 26.

This case is miles from *Bancorp*. Here, neither Oklahoma nor the companies have forfeited their conventional legal remedies: both will continue to press their appeals if the judgment is not vacated pursuant to the parties' settlement. This is simply "not a case in which a defendant has manipulated the judicial process by deliberately aborting appellate review to avoid a decision on the issues." *McClendon v. City of Albuquerque*, 100 F.3d 863, 868 (10th Cir. 1996).

Another critical distinction: no party "oppose[s]" vacatur here. *Contra Bancorp*, 513 U.S. at 20. Quite the contrary. Both Oklahoma, the party and sovereign charged with protecting the watershed, and Appellants firmly *support* vacatur. Requiring the parties to continue litigating over a judgment no one wants would upend the foundational rule that federal courts exercise their authority "only in the last resort, and as a necessity in the determination of real, earnest, and vital controversy between individuals." *Chi. & Grand Trunk Ry. Co. v. Wellman*, 143 U.S. 339, 345 (1892).

Nor are *Bancorp*'s concerns about preserving judicial precedent implicated here. District-court decisions are "not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case," *Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011); *Russman v. Bd. of Educ.*, 260 F.3d 114, 121 n.2 (2d Cir. 2001) ("the loss of the persuasive authority of the district court's judgment is of less compelling concern"). And in any event, no party is asking this Court to vacate the district court's two lengthy opinions on liability. Whatever persuasive value those opinions have will remain even after vacatur, as this case proves. *See* Add.053 & n.42 (citing as "persuasive authority" a Northern District of Oklahoma decision that "was vacated by unopposed motion solely as part of the settlement of the action").

The equities here are also starkly different than those in *Bancorp*. *See Starbucks*, 602 U.S. at 347 (equity looks to what is "just" in each case). Vacatur would result in immediate relief and avoid protracted litigation, along with all the uncertainty, expense, and burdens that come with it. That's a far cry from *Bancorp*, where the petitioner sought post-settlement vacatur primarily to erase an unfavorable ruling below.

B. In its order denying Rule 60(b) relief, the district court determined that *Bancorp* renders post-settlement vacatur improper. Add.143–46. If the judgment is not vacated and these appeals proceed, the parties will present a more fulsome critique of that order in their merits briefing addressing Rule 60(b), which deals with a different source of vacatur authority implicating distinct arguments. Nonetheless, the court's use of *Bancorp* warrants brief discussion here.

To start, the district court concluded that the parties contravened *Bancorp* by "roll[ing] the dice" and then seeking to "erase the result of that gamble through vacatur." Add.146. That was wrong, legally and factually. *Bancorp* mentioned "dice-rolling" only in rejecting the petitioner's policy argument that settlement saves judicial resources, ultimately finding such arguments "quite impossible to assess." 513 U.S. at 28. It never held that "dice-rolling" justifies denying vacatur. And regardless, that concern doesn't apply here: the parties did not gamble on the judgment and then seek to erase it—they negotiated continually since January 2023, and it's far from surprising that a judgment and its appeals spurred settlement once neither side got what it wanted.

More fundamentally, the district court read *Bancorp* to impose an extraordinarily high bar to vacatur following settlement. *See* Add.145–47. That reading did not properly account for the traditional equitable principles underlying *Bancorp*. The statute that *Bancorp* applied (and that this Court must apply here) "is flexible," allowing the court to do what is "just under the circumstances"—a hallmark of traditional equity. *Alvarez v. Smith*, 558 U.S. 87, 94 (2009) (quoting 28 U.S.C. § 2106). To that end, as the Supreme Court has explained in applying *Bancorp*, courts must consider "the *kind* of settlement" and the facts surrounding it. *Id.* (emphasis added). Post-settlement vacatur is not, therefore, *per se* improper. And here, as both sides agree, the specific circumstances strongly favor vacatur.

Nor would it make sense to construe *Bancorp* as imposing a rigid bar to post-settlement vacatur. "The Constitution permits [courts] to decide legal questions only in the context of actual 'Cases' or 'Controversies.'" *Id.* at 92 (quoting U.S. Const., Art. III, § 2). The parties have reached an agreement that will resolve their controversy. But as long as the judgment stands, the parties will be trapped in seemingly endless litigation, consuming this Court's time and resources for years to come, all over a judgment that no one wants. That doesn't accord with the federal courts' role as "essentially passive instruments of government," *United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020), let alone common sense.

In all events, even under the most rigid reading of *Bancorp*, this is an exceptional case. Extraordinary circumstances abound: the resolution of two decades of hard-fought litigation, the sovereign State's determination that vacatur is in its best interest, the prospect of immediate environmental relief, and the need to avoid protracted litigation that will deepen uncertainty and burn the time and resources of all involved. If any case warrants vacatur, it's this one.

CONCLUSION

For these reasons, the Court should vacate the judgment below and remand to enable the parties to fully and finally dismiss this litigation and effectuate their settlement.

July 15, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This motion complies with Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font. It complies with Federal Rule of Appellate Procedure 27(d)(2) because it contains 3,115 words, excluding the sections listed in Rule 32(f).

/s/ Garry M. Gaskins, II

CERTIFICATE OF SERVICE

I certify that on July 15, 2026, I electronically filed this document with the Clerk of the Court using the CM/ECF System, which will send notice to all registered CM/ECF users.

/s/ Garry M. Gaskins, II

Nos. 26-5000, 26-5001, 26-5002, 26-5003, 26-5004, 26-5005, 26-5010, 26-5039, 26-5043, 26-5044, 26-5045, 26-5065

In the United States Court of Appeals for the Tenth Circuit

OKLAHOMA ex rel. DRUMMOND, OKLAHOMA ex rel. STARLING,

Plaintiffs-Appellees,

v.

CAL-MAINE FOODS, INC., TYSON FOODS, INC., ., TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS, INC. CARGILL, INC., CARGILL TURKEY PRODUCTION, LLC, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., AND SIMMONS FOODS, INC.

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Oklahoma (Frizzell, J.)
No. 05-cv-329-GKF-SH

ADDENDUM TO JOINT MOTION TO VACATE JUDGMENT

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

STATE OF OKLAHOMA, *et al.*

Plaintiffs,

vs. **Case No. 05-CV-0329-GKF-SH**

TYSON FOODS, INC., *et al.*

Defendants.

SETTLEMENT

Plaintiffs, the State of Oklahoma ("State") and the Oklahoma Secretary of Energy and Environment, in his capacity as trustee for natural resources for the State of Oklahoma ("Secretary," and collectively with the State, the "Plaintiffs") and Defendants Tyson Foods, Inc.; Tyson Poultry, Inc.; Tyson Chicken, Inc.; Cobb-Vantress, Inc.; Cal-Maine Foods, Inc.; Cargill Incorporated; Cargill Turkey Production, LLC; George's, Inc.; George's Farms, Inc.; Peterson Farms, Inc.; and Simmons Foods, Inc. (collectively, "Defendants"; each singularly a "Defendant")[1] state and agree as follows:

INTRODUCTION

A. The Illinois River Watershed ("IRW") is the watershed with its terminus at Tenkiller Ferry Lake ("Lake Tenkiller") and with its headwaters in Northwest Arkansas. The 8-Digit Hydrologic Unit Code for this watershed is 11110103. The IRW encompasses approximately

[1] Tyson Foods, Inc.; Tyson Poultry, Inc.; Tyson Chicken, Inc.; and Cobb-Vantress, Inc. collectively are referred to hereinafter as "Tyson". Cargill Incorporated and Cargill Turkey Production, LLC collectively are referred to hereinafter as "Cargill". George's, Inc. and George's Farms, Inc. collectively are referred to hereinafter as "George's". Peterson Farms, Inc. is referred to hereinafter as "Peterson". Cal-Maine Foods, Inc. is referred to hereinafter as "Cal-Maine". Simmons Foods, Inc. is referred to hereinafter as "Simmons".

1,069,530 acres located in northeastern Oklahoma (Adair, Cherokee, Delaware, and Sequoyah Counties) and northwestern Arkansas (Crawford, Benton, and Washington Counties) and is depicted in State's Ex. 3351 at OSU0005147. Within the IRW are the Illinois River, its major tributaries, including the Baron (a.k.a. Barren) Fork River, the Caney Creek, and the Flint Creek, State's Ex. 3351 at OSU0005160; *see also* Daily Trans., 10105:7-20 (Grip Testimony), and the 12,900-acre Tenkiller Ferry Lake, State's Ex. 3351 at OSU0005174.

B. Plaintiffs filed a civil Complaint on June 13, 2005 alleging that Defendants degraded and impaired the lands, waters, and other natural resources of the IRW (the "IRW Lawsuit"). The Defendants do not admit any liability arising out of the transactions or occurrences alleged in the Complaint. On December 19, 2025, the United States District Court for the Northern District of Oklahoma entered judgment against Defendants (the "December 19, 2025 Judgment"). Defendants have noticed appeals from the December 19, 2025 Judgment as well as from a subsequent April 8, 2026 Order denying various motions seeking relief from the December 19, 2025 Judgment. Plaintiffs have noticed cross-appeals from the December 19, 2025 Judgment and the April 8, 2026 Order.[2]

C. The Plaintiffs and the Defendants (together, "Parties"; each singularly a "Party") have agreed to this settlement agreement ("Settlement") to resolve fully and finally all claims that were brought or could have been brought against the Defendants in the above-styled proceedings. It is the intention of the Parties that this Settlement will supersede and replace the December 19, 2025 Judgment as to the claims brought by Plaintiffs against Defendants, which the Parties will

[2] The cases on appeal as to the December 19, 2025 Judgment are currently pending in the U.S. Court of Appeals for the Tenth Circuit as Case Nos. 26-5000, -5001, -5002, -5003, -5004, -5005, and -5010 (collectively, the "Appeals"). The cases on appeal from the April 8, 2026 Order are Case Nos. 26-5039, 26-5043, 26-5044, 26-5045, and 26-5065. These appeals have all been consolidated by the 10th Circuit.

seek to have stayed and vacated, and in conjunction with which the Parties release all related claims and appeals, as fully set forth herein.

D. In entering this Settlement, the Attorney General is mindful of the record developed by the Court over many years of litigation, as well as facts outside of the court record. Specifically, the Attorney General has consulted with numerous stakeholders and considered the public interest including the impact of the December 19, 2025 Judgment on farming families, businesses that support family farms, cattlemen, and farming communities. . In entering this settlement, the Parties are mindful of and seeking to minimize litigation risk, in particular risk of an adverse decision on appeal. This Settlement provides guaranteed funding and support for remediation in Oklahoma. Taking all the foregoing into account, the Attorney General has determined that this Settlement best serves the public interest.

EFFECTIVE DATE

1. The effective date of this Settlement (the "Effective Date") shall be July 10, 2026.

ENVIRONMENTAL RELIEF FUND AND MITIGATION

2. Within thirty (30) days of the Termination of the IRW Lawsuit (as defined in Paragraph 26), Defendants shall collectively pay $41,671,000 (the "Environmental Relief Fund") to the State of Oklahoma. The Defendants shall solely determine the apportionment of this obligation amongst themselves. The Environmental Relief Fund shall be used exclusively as follows: (a) for transfer to the Oklahoma Conservation Commission for the exclusive purpose of furthering, in accordance with Oklahoma law, environmental stewardship of Oklahoma's scenic waterways, and (b) for payment of litigation fees and/or litigation expenses incurred by the State and/or its outside private attorneys in the IRW Lawsuit. The State and its agencies shall comply

with all applicable provisions of Oklahoma law, including but not limited to 74 O.S. § 18b(A)(12), in connection with the management and distribution of the Environmental Relief Fund.

3. No part of the Environmental Relief Fund shall constitute, nor shall it be construed as, or treated as constituting payment for penalties, fines, treble or multiple damages, forfeitures, or punitive recoveries.

4. In addition to the foregoing payment, Defendants will support the construction of riparian buffer strips in the IRW in the following manner:

a. This undertaking applies to any Defendant contracting with any IRW Grower with land abutting Lake Tenkiller or a designated Scenic River in the IRW who continues to land apply poultry litter as permitted by this Settlement as of the Effective Date, and who is required by their state-issued nutrient management plan or voluntarily elects to install a vegetative riparian buffer on such lands.

b. Each such Defendant agrees to fund (or obtain funding from a public or private source for) 50% of the costs to construct and install riparian buffer strips on such IRW Growers' farms in the areas adjacent to the fields where litter is applied or adjacent to the applicable water body, provided that (i) the proposed riparian buffer strip does not constitute a bio-security risk with respect to a Defendant's birds, (ii) the proposed riparian buffer strip meets the Defendant's contractual setback requirements, if any, and (iii) the total cost for construction of any individual riparian buffer strip does not exceed the greater of $5,000 dollars per acre or $100,000 in total. For avoidance of doubt, a Defendant's obligations under this provision are limited to riparian buffer strips located on land owned or controlled by the applicable IRW Grower or riparian owner, and a Defendant shall have no obligation under this provision to fund or obtain funding for any easement, land dedication, land acquisition, or other property interest required to construct, install, access, or maintain a riparian buffer strip.

c. Any riparian buffer strip constructed under this provision must be completed within three years of the Effective Date of this Settlement.

d. Costs associated with ongoing maintenance and/or improvements beyond the initial construction and installation of the riparian vegetative buffers described above will not be included in a Defendant's financial obligation under this provision.

PENALTIES UNDER THE OKLAHOMA ENVIRONMENTAL QUALITY CODE

5. Within fourteen (14) days of the Effective Date, the below Defendants shall place into an escrow account (the "Penalty Fund") the following amounts:

a. Cargill: $60,000

b. George's: $10,000

c. Tyson: $190,000

d. Cal-Maine: $70,000

e. Simmons: $90,000

It is the intention of the Parties that Defendants' performance of their obligations under this Paragraph 5 shall qualify as having "satisfied" and "discharged" the penalties imposed upon Defendants under the December 19, 2025 Judgment within the meaning of Federal Rule of Civil Procedure 60(b). No more than (2) two days after the Penalty Fund is released from escrow and paid to the Oklahoma Department of Environmental Quality Revolving Fund consistent with Paragraph 6, the State shall provide written confirmation to such Defendant that it has satisfied and discharged its penalty obligation under the December 19, 2025 Judgment.

6. Two (2) days after Termination of the IRW Lawsuit, the Penalty Fund shall be released from escrow and paid to the Oklahoma Department of Environmental Quality Revolving Fund.[3]

7. For avoidance of doubt, the Penalties paid under the Oklahoma Environmental Quality Code detailed in Paragraphs 5 are separate from the payment to be made to the Environmental Relief Fund under Paragraph 2, the payments made to the Auditor Fund under Paragraph 15, and from any penalties that may be assessed due to non-compliance pursuant to Paragraphs 22-23.

POULTRY LITTER REMOVAL COMMITMENTS

8. During the Term, each individual Defendant will comply with the following obligations as to poultry litter generated from poultry houses owned or operated by that Defendant or by an independent Grower under contract with that Defendant that are physically located in the IRW (each an "IRW Grower" and collectively the "IRW Growers")[4]:

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[3] *See* 27A Okla. Stat. § 2-3-504(G) ("Except as otherwise provided by law, administrative and civil penalties [for violations of the Oklahoma Environmental Quality Code] shall be paid into the Department of Environmental Quality Revolving Fund.").

[4] As of the date of this signing, Cargill certifies that no poultry houses in the IRW are owned or operated by Cargill or any producer under contract with Cargill. Any future obligations of Cargill beyond the initial payment into the Environmental Relief Fund, the initial payment into the Auditor Fund, and the initial payment into the Penalty Fund will be triggered upon Cargill resuming or commencing poultry growing operations in the IRW, either individually or through contract poultry growers. As of the date of this signing, Peterson certifies that no poultry houses in the IRW are owned or operated by Peterson or any producer under contract with Peterson. Any future obligations of Peterson beyond the initial payment into the Environmental Relief Fund and the initial payment into the Auditor Fund will be triggered upon Peterson or a Peterson Successor resuming or commencing poultry growing operations in the IRW, either individually or through contract poultry growers. A Peterson Successor is defined as any entity formed or owned in whole or in part by one or more of the officers and/or shareholders of Peterson at the time of its dissolution.

Time Period	Litter Removal Commitments
Years 1 & 2	No more than 40% of litter removed each year from poultry houses of each Defendant's IRW Growers will be land applied to soils located within either the Oklahoma or Arkansas portions of the IRW. None of the litter exported from the IRW to meet the foregoing requirement may be land applied to soils located within the Oklahoma portion of any Oklahoma Nutrient Sensitive Watershed ("ONSW") defined below.[5]
Years 3 & 4	No more than 30% of litter removed each year from poultry houses of each Defendant's IRW Growers will be land applied to soils located within either the Oklahoma or Arkansas portions of the IRW. None of the litter exported from the IRW to meet the foregoing requirement may be land applied to soils located within the Oklahoma portion of any ONSW.
Years 5, 6 & 7	No more than 20% of litter removed each year from poultry houses of each Defendant's IRW Growers will be land applied to soils located within either the Oklahoma or Arkansas portions of the IRW. None of the litter exported from the IRW to meet the foregoing requirement may be land applied to soils located within the Oklahoma portion of any ONSW.

a. "Oklahoma Nutrient Sensitive Watershed" (each an "ONSW" and collectively the "ONSWs") means those watersheds shown in the map in Attachment A. The watersheds shown in the map in Attachment A each include a waterbody listed on the 2022 Oklahoma 303(d) List of Impaired Waters[6], whereby the waterbody is

[5] Neither this provision, nor any other provision in this Settlement, allows for, or should be construed as allowing for, non-compliance with any and all applicable laws, regulations, rules, court orders, and judgments.

[6] The 2022 Oklahoma 303(d) List of Impaired Waters is Appendix C of the 2022 Integrated Report on Water Quality in Oklahoma. Appendix C is available at https://oklahoma.gov/content/dam/ok/en/deq/documents/water-division/OK_2022-Appendix-C-Final.pdf.

impaired for nutrient-related causes including nitrogen, phosphorus, low dissolved oxygen in lakes, or high chlorophyll-a concentrations.

b. For purposes of the foregoing litter removal commitments, "Year 1" shall be the twelve (12) month period commencing on the first day of the first month following the Effective Date, and each subsequent year shall commence on the one-year anniversary and end twelve (12) months thereafter.

c. For compliance purposes the percentages in the table above shall be based on the weight of litter removed each year from the houses of the IRW Growers. If the weight of a load of litter removed from a house of an IRW Grower cannot be reasonably determined using a scale, such litter will not be land applied in the IRW or in the Oklahoma portion of any other ONSW, and such litter will not be included in calculations for showing a Defendant's compliance, or non-compliance, with the litter removal commitments of this Paragraph 8.

d. For the calculations for showing a Defendant's compliance with the litter removal commitments of this Paragraph 8, the weight of the litter removed from a house of an IRW Grower is the weight of the litter at the time the litter is removed from the farm, or applied to land on the farm.

e. Poultry litter removed from a house and stored temporarily in a covered litter shed or stacking shed or in any other manner allowed by state law shall not be considered "removed" for purposes of the foregoing commitments unless and until such stored litter is subsequently hauled away from the farm or land applied to soils in a manner compliant with this Settlement and all applicable laws, rules, and regulations.

f. The litter removal commitments described for "Years 5, 6 & 7" in the table above may be extended by mutual written agreement of the Parties.

g. For avoidance of doubt, Defendants acknowledge that each Defendant is individually responsible for meeting its litter removal commitment, consistent with the terms of this settlement, and satisfaction of each Defendant's litter removal commitments remains that Defendant's obligation, not the obligation of any other Defendant or of any IRW Growers.

9. Within ninety (90) days of the Effective Date, each Defendant (except Cargill and Peterson) shall report to the Auditor (defined hereinafter) and the Plaintiffs a good faith estimate of the volume of poultry litter from IRW Growers applied to soils located within the IRW during the three full years immediately preceding December 19, 2025, the date the Judgment was entered (each a "Three-Year Average") and will promptly respond to any objections or reasonable inquiries by the Plaintiffs as to the reported Three-Year Average. Any objections to a Defendant's reported Three-Year Average not resolved by mutual agreement will be subject to a binding determination of the Auditor. In no event will the amount of poultry litter associated with any individual Defendant and land applied to soils located within the IRW for any year within the Term of this Settlement exceed that Defendant's Three-Year Average.

10. Each Defendant incurring litter removal commitments under this Settlement shall undertake those commitments itself and/or shall take reasonable steps to ensure that its IRW Growers have access to the equipment or other resources necessary to meet the litter removal commitment.

11. For any given year, a Defendant may meet its litter removal commitment by arranging to remove from the IRW litter generated on poultry farms operated by or contracted to another Defendant (provided that in such instance only volumes in excess of the other Defendant's

own litter removal commitment for that year can be counted toward the alternative compliance method available under this Paragraph 11).

12. Provided that a Defendant complies with the litter removal commitments described in Paragraph 8, the State will not bring any claim, alleging or asserting that such Defendant is liable for contamination (through any known or reasonably discoverable constituents of poultry litter as of the Effective Date) to the land, surface waters or groundwaters within the IRW including Lake Tenkiller, arising from or relating to poultry litter generated by current or former IRW Growers. The foregoing covenant not to sue shall apply for the duration of the Term specified in Paragraph 41 and any extension periods agreed to by the Parties.

13. For avoidance of doubt, the handling, transportation, and application of poultry litter anywhere in the State of Oklahoma, including within the IRW, during and after the Term of this Settlement, remains subject to all state litter management laws and regulations as amended from time to time, including laws and regulations requiring adherence to state-issued nutrient management plans.

AUDITOR

14. Within sixty (60) days after the Effective Date, the parties will jointly engage Scott Stoodley (the "Auditor") to audit Defendants' compliance with their litter removal commitments. The Parties agree that, except for claims of fraud, the Auditor shall be immune from any claim by any Defendant in his professional or personal capacity arising from his conduct under this Settlement. Any and all disputes arising from the Auditor's duties under this Settlement shall be resolved as among the Parties. In the event Mr. Stoodley declines to serve or is unable to serve for the entire Term of this Settlement, the Parties shall confer in good faith to select a replacement Auditor of similar qualifications to Mr. Stoodley. Any dispute over Auditor succession may be

submitted to arbitration pursuant to Paragraphs 42-44 below.

15. Within sixty (60) days of the Effective Date, the following Defendants shall deposit the following amounts into an escrow account (the "Auditor Fund") to be used to pay for the services and/or expenses of the Auditor under this Settlement.

a. Cargill: $325,000

b. George's: $250,000

c. Peterson: $50,000

d. Tyson: $950,000

e. Cal-Maine: $150,000

f. Simmons: $175,000

16. The State shall establish a payment schedule for the Auditor and approve any disbursements from the Auditor Fund to the Auditor. Defendants' financial obligations for cost of the Auditor shall be fully and finally satisfied through the payments required under Paragraph 15 regardless of the actual cost of the Auditor. Once the Auditor Fund established under Paragraph 15 is exhausted, the State shall be responsible for funding any further auditing activities under this Settlement, including by using funds obtained from other sources. Any surplus or balance remaining in the Auditor Fund as of the termination of this Settlement shall be added to the Environmental Relief Fund established under Paragraph 2.

17. For avoidance of doubt, the payments made under Paragraph 15 are separate from the payment made to the Environmental Relief Fund under Paragraph 2, the Penalties paid under the Oklahoma Environmental Quality Code under Paragraph 5, and from any penalties that may be assessed due to non-compliance pursuant to Paragraphs 22-23.

18. Within sixty (60) days of the conclusion of each year included in the table in

Paragraph 8, the Defendants shall certify under oath compliance with the applicable litter removal commitments set forth in Paragraph 8 and provide the Auditor with business records and supporting documentation sufficient to substantiate such compliance.[7] Each Defendant shall cooperate with all reasonable requests by the Auditor to obtain and/or inspect records of that Defendant, its IRW Growers, and/or the haulers or other persons removing litter from the farms of IRW Growers to the extent necessary to monitor compliance with the foregoing litter removal commitments.

19. If the Auditor believes that additional information is needed to assess a Defendant's compliance with its litter removal obligations, or the Auditor wishes to conduct an onsite inspection, the Auditor shall request that information or access from that Defendant, demonstrating why the same is necessary to evaluate compliance with the applicable litter removal commitment.

20. If a Defendant fails to provide the requested information or access to the Auditor's satisfaction, he may refer the dispute to the Oklahoma Attorney General, who may refer the dispute to binding arbitration pursuant to Paragraphs 42-44.

21. If the Auditor believes that a Defendant has Materially failed to meet its litter removal commitment for a given year, the Auditor shall provide written notice of the alleged deficiency to such Defendant and the Oklahoma Attorney General. "Material" in this context shall mean that a Defendant failed to meet an applicable litter removal restriction by more than five

[7] Any Defendant (other than Peterson Farms) that does not have any IRW Growers during the relevant time period, shall satisfy the obligations of Paragraph 8 by certifying in writing that it did not have any IRW Growers during the relevant time period. Peterson Farms or any Peterson Successor shall become subject to this requirement upon any of them entering the business of poultry production, which includes growing poultry, either through its own operations or those of contract growers.

percent (5%).[8] During the sixty-day period after providing notice, the Auditor shall make himself reasonably available to meet with the Defendant and the Oklahoma Attorney General to discuss the substance of the alleged violation, including but not limited to the reason(s) for the Auditor's belief that the Defendant is in violation, and the Auditor shall consider in good faith any additional evidence or arguments that the Defendant chooses to submit to demonstrate its compliance with its obligations and any additional evidence or arguments that the State chooses to submit to demonstrate non-compliance.

22. If, after considering any additional evidence or arguments presented, the Auditor concludes that a Material violation of the Defendant's litter removal obligation has occurred, then the Defendant will make a one-time payment to the Auditor Fund equal to the sum of (1) $10,000 plus (2) $30/ton for each ton of litter that produced the violation.[9]

23. If the Defendant disputes the existence of a Material violation of its litter removal obligation or the calculation of a penalty amount, and the State insists on its payment, the Defendant may within 30 days initiate arbitration pursuant to Paragraphs 42-44. The Defendant shall pay any undisputed amount prior to initiating arbitration but may withhold payment of any disputed amount until thirty (30) days after a final determination is made by the arbitrator without incurring any interest or further penalty provided the arbitrator determines that the dispute was instituted in good faith. If the arbitrator determines that the dispute was not instituted in good

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[8] By way of illustration only, during Year 1, if 100,000 tons of litter was removed from the houses of the IRW Growers of a Defendant, and more than 42,000 tons of such litter was land applied in the IRW, in the Oklahoma portion of any ONSW or ONSWs, or in any combination of the IRW and the Oklahoma portion of any ONSW or ONSWs, then the Defendant would have Materially failed to meet the litter removal restrictions of Paragraph 8.

[9] By way of an illustration only, if 5,000 tons of litter more than was permitted under Paragraph 8 was land applied in the IRW, then the stipulated penalty for that litter removal violation would be $160,000 computed as follows: $10,000 + (5,000 tons x $30).

faith, the Defendant shall pay an additional one-time $10,000 penalty to the Auditor Fund.

24. The Auditor shall annually prepare a report describing the Defendants' compliance with the litter removal commitments including any Material violation of the litter removal commitments and any penalty demands. Such reports shall be delivered to the Oklahoma Attorney General. The annual reports required under this Paragraph 24 shall be treated by the State as public records to the extent permitted by applicable law. To protect the privacy of third parties, the reports shall not contain information specifically identifying the name or location of poultry farms, land application sites, or landowners of such sites.

RELEASE OF JUDGMENT, WAIVER & DISMISSAL OF APPEALS

25. Concurrent with the execution of this Settlement, Plaintiffs shall execute a full and final release of the December 19, 2025 Judgment, substantially in the form of Attachment B, hereto. It is the intention of the Parties that this release shall qualify as a "release" within the meaning of Federal Rule of Civil Procedure 60(b).

26. Following the Effective Date, the Parties shall cooperate, as necessary and appropriate, in securing Termination of the IRW Lawsuit, meaning, as to the claims brought by Plaintiffs against Defendants, both (i) vacatur of the December 19, 2025 Judgment and (ii) dismissal with prejudice of Plaintiffs' claims against Defendants in the IRW Lawsuit. The Parties' cooperation under this Paragraph 26 shall include the following:

a. No later than July 10, 2026, the Parties shall advise the Tenth Circuit Mediator of this Settlement and seek a consensual 30-day extension of all appellate briefing obligations.

b. No later than July 15, 2026, the Parties shall jointly file a motion in the Tenth Circuit seeking at least the following relief: (i) a stay of the December 19, 2025 Judgment pending the completion of all appeals in the IRW Lawsuit, and (ii) vacatur of the December 19, 2025 Judgment given this Settlement. The Parties shall work in good faith to support this motion and to obtain promptly the relief requested.

c. If the Tenth Circuit does not vacate the December 19, 2025 Judgment upon the Parties' joint motion, then (i) if the Tenth Circuit does not remand, the Parties shall jointly file a motion in the district court seeking an indicative ruling under Federal Rule of Civil Procedure 62.1 that the district court would vacate its December 19, 2025 Judgment pursuant to Federal Rule of Civil Procedure 60(b) if it were remanded from the Tenth Circuit, and (ii) if the Tenth Circuit remands the case, the Parties shall jointly file a motion in the district court seeking to vacate its December 19, 2025 Judgment pursuant to Federal Rule of Civil Procedure 60(b). The Parties shall jointly request expedited consideration of any motion filed under this sub-paragraph and shall work in good faith to support this motion and to obtain promptly the relief requested.

d. If a motion described in Paragraph 26(c)(i) is granted, the Parties shall promptly and jointly move the Tenth Circuit for immediate issuance of the mandate. The Parties shall work in good faith to support this motion and to obtain promptly the relief requested.

e. If the motion described in Paragraph 26(c)(i) is granted, upon issuance of the mandate, the Parties shall promptly and jointly move the district court for relief from the December 19, 2025 Judgment under Federal Rule of Civil Procedure 60(b). The Parties shall work in good faith to support this motion and to obtain promptly the relief requested.

f. If the motion described in Paragraph 26(b)(ii), Paragraph 26(c)(ii), or Paragraph 26(e) is granted, as soon as the district court obtains jurisdiction, the Parties shall promptly and jointly file a stipulation of dismissal with prejudice of the State's claims against Defendants in the IRW Lawsuit pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

g. The Parties shall work in good faith to develop strategies and make additional submissions consistent with their mutual goal of obtaining a 30-day consensual extension of all appellate briefing obligations in the Tenth Circuit, obtaining a stay of the December 19, 2025 Judgment pending appeal, obtaining vacatur of the December 19, 2025 Judgment in light of this Settlement, and obtaining a final judgment dismissing with prejudice the claims brought by the State against Defendants in the IRW Lawsuit.

27. Contingent on Termination of the IRW Lawsuit, the Parties waive any right they may have to appeal as to each other from the December 19, 2025 Judgment, the April 8, 2026 Order (Doc. No. 3300), and any other decisions of the district court preceding Termination of the IRW Lawsuit. Within 2 days of Termination of the IRW Lawsuit, the Parties will voluntarily dismiss all pending notices of appeal relating to the IRW Lawsuit.

28. The Parties agree to work together in good faith to implement the terms of this Settlement and to oppose any efforts by others who are not Parties to this Settlement to challenge it. The Parties also agree to make best efforts to encourage third parties to support the terms and intent of this Settlement. The Parties agree to work together cooperatively to support the aims of the Settlement by encouraging engagement with stakeholders and participation in educational programs to increase the likelihood of implementation of practices that reduce the impact of excess

phosphorus in the IRW.

29. In the event the Parties are unsuccessful in securing Termination of the IRW Lawsuit, either because the district court and the Tenth Circuit deny the Parties' motions to vacate the December 19, 2025 Judgment or because more than six months has elapsed after the Effective Date without any court having issued an order vacating the December 19, 2025 Judgment, then the funds placed in escrow pursuant to Paragraphs 5 and 15 shall revert to Defendants, and this Settlement shall not be enforceable by any Party against any other Party. To the extent that any Defendant has already undertaken, during the time period between the Effective Date and the earlier of the denial of the motions or six month after the Effective Date, an obligation under this Settlement that is not revocable, that undertaking shall be treated as credit toward the addressing of any corresponding obligation under the December 19, 2025 Judgment.

30. Each Party agrees to not assert any other Party's commitments in this Settlement in support of or opposition to any appeal challenging the validity or legality of the December 19, 2025 Judgment.

GENERAL RELEASES

31. As of the Effective Date, the State, on behalf of itself and all officers, agencies, divisions, subdivisions, departments, and persons acting or claiming to act on its behalf, including but not limited to the Secretary (the "Releasing Parties"), shall and does fully, finally, and forever release, relinquish and discharge the Defendants together with any and all their past and current direct and indirect, corporate parents (including holding companies), owners, subsidiaries, affiliates, departments, divisions, joint ventures, predecessors, and successors, and each of their respective past and current, direct or indirect, officers, directors, trustees, partners, managing directors, shareholders, managers, members, employees, attorneys, equity holders, agents,

beneficiaries, executors, insurers, advisors, assigns, heirs, legal or other representatives, only in his/her/its capacity on behalf of a Defendant (the "Released Parties") from any and all manner of claims, demands, actions, suits or causes of action, that the Releasing Parties ever had, now have, or hereafter can, shall, or may ever have, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, losses, damages, and the consequences thereof that have been asserted, or could have been asserted, under federal or state law in any way arising out of or relating in any way to the conduct alleged or that could have been alleged in the case as it concerns poultry litter in the Illinois River Watershed, any waterways, groundwater or waters of the State in the Illinois River Watershed, and/or Lake Tenkiller (the "Released Claims"). For avoidance of doubt, the Parties agree that all liabilities and obligations of the Released Parties as defined in this Settlement under the provisions of the December 19, 2025 Judgment are Released Claims for purposes of this Settlement. The Releasing Parties further agree that they will not file, or encourage others to file or pursue, any claim against the Released Parties arising out of, or relating to, the Released Claims. However, in the event a non-party to this Settlement files or pursues any claim against the Released Parties arising out of, or relating to, the Released Claims, the State reserves any and all rights to intervene or take other actions necessary to protect the State's interests provided that any such advocacy by the State is not inconsistent with this Settlement. For the avoidance of doubt, the State's reservation of rights includes the right to file a motion to intervene, at the State's sole discretion, in any and all cases where the State is implicated as a necessary party.

32. As of the Effective Date, each Defendant, on behalf of itself and all of its past and current direct and indirect corporate parents (including holding companies), owners, subsidiaries, affiliates, departments, divisions, joint ventures, predecessors, and successors, and each of their

respective past and current, direct or indirect, officers, directors, trustees, partners, managing directors, shareholders, managers, members, employees, attorneys, equity holders, agents, beneficiaries, executors, insurers, advisors, assigns, heirs, and legal or other representatives (the "Defendant Releasing Parties"), shall and does fully, finally, and forever release, relinquish and discharge the State, the Secretary, and the other Releasing Parties, together with each of their respective past and current officers, agencies, divisions, subdivisions, departments, employees, attorneys, agents, and representatives, only in his/her/its capacity on behalf of the State (the "State Released Parties"), from any and all manner of claims, demands, actions, suits or causes of action, whether at law or in equity, that the Defendant Releasing Parties ever had, now have, or hereafter can, shall, or may ever have, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, losses, damages, and the consequences thereof that have been asserted, or could have been asserted, under federal or state law in any way arising out of or relating in any way to the Released Claims, the IRW Lawsuit, this Settlement, or the December 19, 2025 Judgment, including without limitation any claim for breach of contract, contribution, indemnity, reimbursement, or reservation of rights arising out of or relating to any of the foregoing (collectively, the "Defendant Released Claims"). The Defendant Releasing Parties further agree that they will not file, or encourage others to file or pursue, any claim against the State Released Parties arising out of, or relating to, the Defendant Released Claims.

33. It is the express intention of the State to reserve any rights, claims or causes of action that the State may have against any person other than the Released Parties but to release fully and completely the Released Parties. It is specifically intended that the Released Parties are, and shall be, to the extent permitted by law, released with respect to any liability or alleged liability

as a joint tortfeasor regarding the Released Claims. The State agrees and intends that this Settlement shall also release any and all claims for damages to the extent of any several share of fault for which contribution might otherwise be had against the Released Parties regarding the Released Claims.

34. The Released Parties agree not to use this Settlement as the reason or basis for any decision not to renew or extend contracts with IRW Growers. Notwithstanding the preceding sentence, nothing in this Settlement obligates the Released Parties to renew or extend any contract with any particular IRW Growers.

35. Contingent upon Termination of the IRW Lawsuit, all claims asserted in relation to this action by any Defendant against any third party defendant, including the City of Tahlequah and the City of Westville, currently severed and pending in Case No. 06-cv-503-GFK-SH (N.D. Okla.), shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A). Defendants will make all necessary court filings to effectuate this dismissal in all related pending actions.

36. As of the Effective Date, the State further covenants and agrees that it will not assert any Released Claim against any independent contract grower that is currently, or has been during the pendency of the IRW Lawsuit, under contract with any Defendant to care for poultry in the IRW.

37. Contingent upon Termination of the IRW Lawsuit, each Defendant, on behalf of itself and all officers, agencies, divisions, subdivisions, departments, and persons acting or claiming to act on its behalf, shall fully, finally, and forever release, relinquish and discharge each independent contract grower that is currently, or has been during the pendency of the IRW Lawsuit, under contract with such Defendant from any and all manner of claims, demands, actions, suits or

causes of action, seeking indemnification for any fees, costs or expenses paid by such Defendant in connection with the IRW Lawsuit, including but not limited to any funds paid by such Defendant pursuant to this Settlement.

ATTORNEYS' FEES AND COSTS

38. All Parties waive and release any right available to such Party to seek to recover its attorneys' fees, costs and expenses incurred in connection with this lawsuit from any other Party.

39. The State reserves the right, if necessary, to petition the Court for a determination of the costs and fees owed by the State to the outside or private counsel representing the State in this litigation as a result of this Settlement.

40. For the avoidance of doubt, the Parties agree that Defendants' liability for any award or determination by the Court for costs or attorneys' fees, whether based upon work performed by private or outside attorneys or by attorneys who are current or former employees of the State, has been fully satisfied and released under the terms of this Settlement. For the avoidance of doubt, the Parties agree that the State's liability for any award or determination by the Court for costs or attorneys' fees, whether based upon work performed by private or outside attorneys or by attorneys who are current or former employees of a Defendant or Defendants, has been fully satisfied and released under the terms of this Settlement.

TERM

41. The Term of this Settlement shall be seven (7) years from the Effective Date ("Term").

DISPUTE RESOLUTION

42. Any dispute arising under this Settlement (excluding disputes as to a Defendant's Three-Year Average under Paragraph 9) shall be referred to binding arbitration pursuant to the

rules of the American Arbitration Association ("AAA").

43. The arbitration shall be conducted by a single arbitrator appointed by the AAA, who shall be a former federal or state judge or magistrate not from Oklahoma or Arkansas, and who satisfies the AAA's conflict of interest rules. The arbitrator shall be appointed promptly following the submission of the dispute.

44. The arbitration shall be conducted on an expedited basis. Ten (10) days following appointment of the arbitrator each Party shall submit its case in a brief not to exceed ten (10) pages and supporting exhibits. Seven (7) days later, each Party may submit a Reply brief of no more than five (5) pages. The arbitrator may hold a hearing in his or her sole discretion, which may be conducted remotely. The arbitrator shall render a decision within thirty (30) days of the submission of reply briefs, or fifteen (15) days after a hearing if one is held, such decision being final and binding.

NOTICE & CORRESPONDENCE

45. Any notice, report, or other communication required or permitted under this Settlement shall be in writing and shall be deemed to have been duly given when: (i) mailed by United States registered or certified mail, return receipt requested; (ii) mailed by overnight express mail or deposited for delivery with any other nationally recognized overnight or same-day delivery service; (iii) sent as a PDF attachment to electronic mail; or (iv) delivered in person, to the Parties at the following addresses:

To Plaintiffs:

Gentner Drummond, OBA #16645
Amie Ely, OBA #35840
Garry M. Gaskins, II, OBA #20212
Jennifer L. Lewis, OBA #32819
Oklahoma Office of Attorney General
313 NE 21st Street

Oklahoma City, OK 73105
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IRW-poultry-settlement@oag.ok.gov

To Tyson:

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Washington, DC 20005
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gtodd@sidley.com

-and-

John M. Tanski
Stuart L. Spencer
Katherine A. Clements
Wesley W. Wiechman
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(479) 290-4000
john.tanski@tyson.com
stuart.spencer@tyson.com
katherine.clements@tyson.com
wesley.wiechman@tyson.com

To Cargill:

Cargill Meat Solutions Corporation
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brian_sheern@cargill.com

To: George's:

George's, Inc.
Attn: Legal Department
P.O. Box 2030

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To Peterson:

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Fayetteville, AR 72704
blakeevans@gmail.com

To Cal-Maine:

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Justin T. Hiersche
McAfee & Taft P.C.
211 N. Robinson Ave.
Oklahoma City, OK 73102
(405) 552-2356
Christopher.scaperlanda@
mcafeetaft.com

To Simmons:

Simmons Foods, Inc.
Attn: General Counsel
601 N. Hico St.
Siloam Springs, AR 72761
generalcounsel@simfoods.com

A Party may change the names or addresses where notice is to be given by providing notice to the other Parties of such change in accordance with this Paragraph 45.

PAYMENT DELIVERY, ESCROW & TAX REPORTING

46. Payments to the State shall be made payable to "State of Oklahoma" and delivered to:

Oklahoma Office of the Attorney General
Attn: Finance
313 NE 21st Street
Oklahoma City, OK 73105

47. Payments to the Oklahoma Department of Environmental Quality Revolving

Fund shall be made payable to "Oklahoma Department of Environmental Quality" and delivered to:

Oklahoma Department of Environmental Quality
Attn: Finance
P.O. Box 1677
Oklahoma City, OK 73101-1677

48. The State shall be responsible for arranging for the creation of the escrow accounts contemplated by Paragraphs 5 and 15. The State shall appoint a federally-chartered or state-chartered financial institution as escrow agent for such escrow accounts. The State shall provide payment instructions for such escrow accounts to Defendants not fewer than ten (10) days before payment is due.

49. The State shall issue timely and accurate IRS Forms 1098-F to Cal-Maine, Cargill, George's, Peterson, Simmons, and Tyson for the payments made by each pursuant to this Settlement, as required by law.

AUTHORITY, SCOPE & EFFECT OF SETTLEMENT

50. Each Undersigned signatory certifies that he or she is fully authorized to enter into this Settlement and to execute and legally bind such Party to this document.

51. The Parties have read and understand this Settlement and enter into it voluntarily, each having been advised by their undersigned counsel of the meaning and effect of each provision of this Settlement.

52. This Settlement shall not be used against the Defendants as evidence of liability, fault, or wrongdoing in any proceeding, and shall not have collateral estoppel or res judicata effect as to issues not expressly resolved herein.

53. This Settlement, and the remedial and monetary obligations thereunder, address only the acts or omissions of the Defendants as alleged in the Complaint, and do not address the

alleged acts and omissions of any other person or entity.

54. This Settlement has been negotiated by the Parties at arms-length and in good faith and the terms memorialized herein are intended to avoid further prolonged and complex litigation and appeal between the Parties. No Party shall be considered the drafter of this Settlement or any of its provisions for the purpose of any statute, case law, rule of interpretation or rule of construction that would or might cause any provision to be construed against the drafter of this Settlement.

55. This Settlement shall be governed by the laws of the State of Oklahoma without regard to conflicts of laws principles.

56. This Settlement may be modified or amended only by an agreement in writing executed by authorized representatives all Parties.

57. The failure by any Party hereto to insist upon strict performance of any of the terms or conditions of this Settlement shall not be deemed a waiver of any of the rights or remedies that such Party may have and shall not be deemed a waiver of any subsequent breach or default. To be effective, any waiver with regard to this Settlement must be in writing and signed by an authorized representative of the Party granting the waiver, and any such waiver shall apply only to the matter or instance specifically waived.

58. This Settlement may be executed in counterparts, including by facsimile or electronic transmission, and when each Party has signed and delivered (including without limitation, by facsimile or electronic transmission) at least one such counterpart, each counterpart shall be deemed an original and, when taken together with other signed counterparts, shall constitute the Settlement which shall be binding upon and effective in accordance with its terms as to all Parties.

59. This Settlement shall be binding upon, and inure to the benefit of, the Parties' successors and assigns.

60. This Settlement constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to this matter, and the Parties acknowledge that there are no representations, agreements, or understandings relating to the Settlement other than those expressly set forth herein.

[SIGNATURE PAGES FOLLOW]

State of Oklahoma and the Oklahoma Secretary of Energy and Environment

____

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AMIE ELY, OBA #35840
First Assistant Attorney General
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Cargill, Inc. and Cargill Turkey Production, LLC

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On Behalf of the Defendants,
Cargill, Inc. and Cargill Turkey Production, LLC

George's, Inc. and George's Farms, Inc.

Robert George, OBA #18562
Georges, Inc.
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Springdale, AR 73764
(479) 927-7249

And

K.C. Dupps Tucker
Kristy Boehler
The Law Group of Northwest Arkansas LLP
1830 Shelby Lane
Fayetteville, AR 72704

And

Perry L. Glantz
Stinson LLP
1144 15th Street, Suite 2400
Denver, CO 80202
(303) 376-8410

And

Clinton Derek Russell
Taylor Foster Law Firm
P.O. Box 309
Claremore, OK 74018
(918) 343-4100

On Behalf of the Defendants,
George's, Inc. and George's Farms, Inc.

Peterson Farms, Inc.

____

Blake Evans
(for purposes of winding down the affairs of dissolved Peterson Farms, Inc. pursuant to Arkansas Statute Section 4-26-1104)

Counsel for Peterson Farms, Inc.

____

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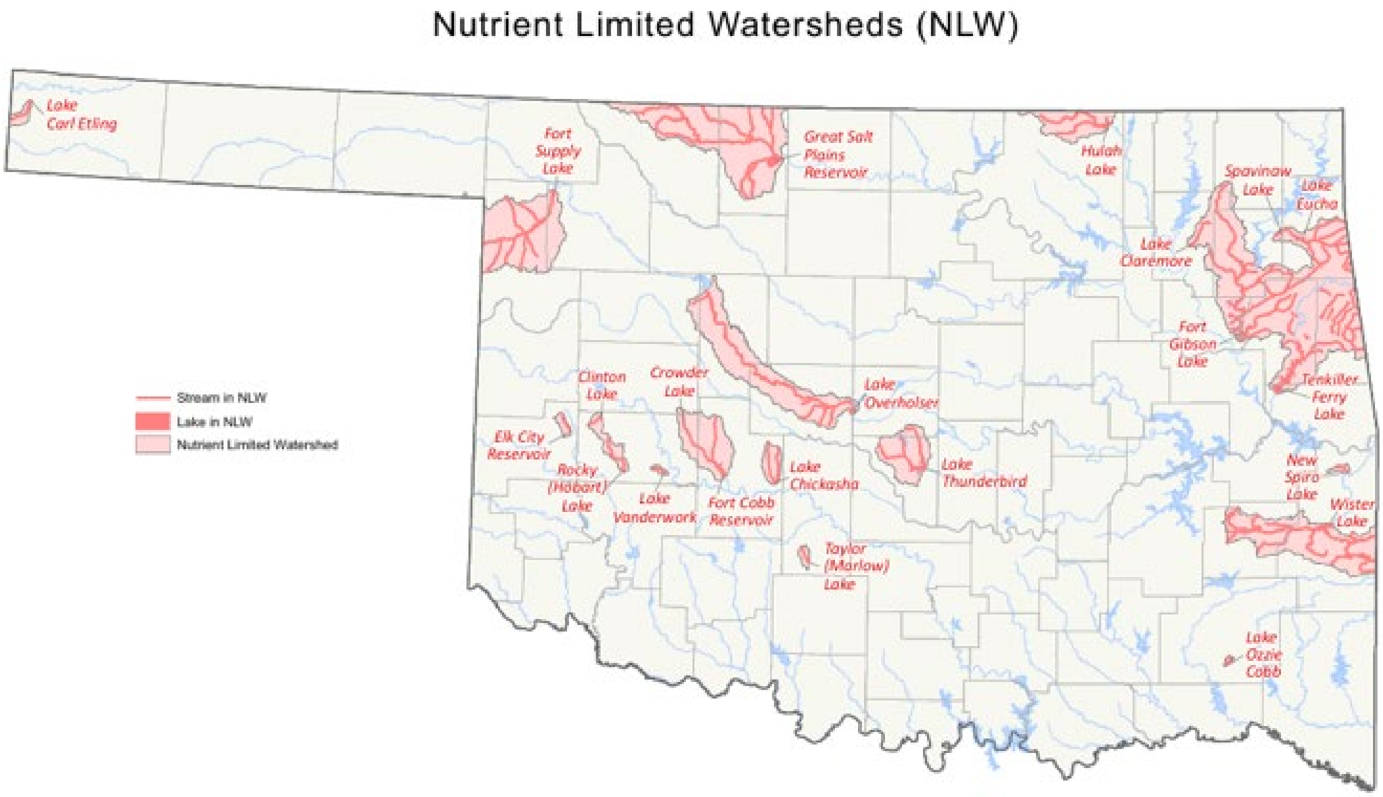
ATTACHMENT A



Source: https://www.owrb.ok.gov/maps/pdf_map/Nutrient_Limited_Watersheds.pdf (July 9, 2026)

ATTACHMENT B

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

STATE OF OKLAHOMA, *et al.*

Plaintiffs,

vs. **Case No. 05-CV-0329-GKF-SH**

TYSON FOODS, INC., *et al.*

Defendants.

PLAINTIFFS' RELEASE OF DEFENDANTS

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the State of Oklahoma, acting by and through Gentner Drummond, its duly elected Attorney General, on behalf of itself and all officers, agencies, divisions, subdivisions, departments, and persons acting or claiming to act on its behalf, including but not limited to the Oklahoma Secretary of Energy & Environment (the "Releasing Parties"), shall and does fully, finally, and forever release, relinquish and discharge Cal-Maine Foods, Inc.; Cargill Incorporated; Cargill Turkey Production, LLC; Cobb-Vantress, Inc.; George's, Inc.; George's Farms, Inc.; Peterson Farms, Inc.; Simmons Foods, Inc.; Tyson Chicken, Inc.; Tyson Foods, Inc.; and Tyson Poultry, Inc. (the "Defendants"), together with any and all Defendants' past and current direct and indirect, corporate parents (including holding companies), owners, subsidiaries, affiliates, departments, divisions, joint ventures, predecessors, and successors, and each of their respective past and current, direct or indirect, officers, directors, trustees, partners, managing directors, shareholders, managers, members, employees, attorneys, equity holders, agents, beneficiaries, executors, insurers, advisors, assigns, heirs, legal or other representatives, only in his/her/its capacity on behalf of a Defendant (the "Released Parties") from any and all manner of claims, demands, actions, suits or causes of action, that the Releasing Parties ever had, now have, or hereafter can, shall, or may ever have, on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected, actual or contingent, liquidated or unliquidated claims, injuries, losses, damages, and the consequences thereof that have been asserted, or could have been asserted, under federal or state law in any way arising out of or relating in any way to the conduct alleged or that could have been alleged in the above-captioned case as it concerns poultry litter in the Illinois River Watershed, any waterways, groundwater or waters of the State in the Illinois River Watershed, and/or Lake Tenkiller (the "Released Claims"). For avoidance of doubt, the State and Defendants agree that all liabilities and obligations of the Released Parties under the provisions of the December 19, 2025 Judgment of the United States District Court for the Northern District of Oklahoma in the above-captioned case are Released Claims for purposes of this Release.

Dated this 10th day of July, 2026.

GENTNER DRUMMOND, OBA #16645
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Counsel for Plaintiffs the State of Oklahoma and the Oklahoma Secretary of Energy and Environment

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

STATE OF OKLAHOMA, ex rel. GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma and OKLAHOMA SECRETARY OF ENERGY AND ENVIRONMENT KEN McQUEEN, in his capacity as the TRUSTEE FOR NATURAL RESOURCES FOR THE STATE OF OKLAHOMA,*	)	
Plaintiffs,	)	
v.	)	Case No. 05-CV-329-GKF-SH
TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS, INC., CAL-MAINE FOODS, INC., CARGILL, INC., CARGILL TURKEY PRODUCTION, LLC, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., and SIMMONS FOODS, INC.,	)	
Defendants.	)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

DATED: January 18, 2023

* Pursuant to Fed. R. Civ. P. 25(d), Oklahoma's current Attorney General and current Secretary of Energy and Environment are substituted as relators.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Illinois River runs 145 miles from East to West through the Ozarks of Northwest Arkansas and Northeast Oklahoma. In the 1970s, the Oklahoma Legislature found the Illinois River and its tributaries "possess[ed] such unique natural scenic beauty, water, fish, wildlife and outdoor recreational values of present and future benefit to the people of the state" that it designated most of the Illinois River and two of its tributaries as Scenic Rivers. 82 Okla. Stat. § 896.5. As late as the 1960s, its waters were crystal clear. But that is no longer the case. The river is polluted with phosphorus, with adverse consequences that include low dissolved oxygen; abundant filamentous green algae; blue-green algae in Lake Tenkiller near the river's terminus; greatly decreased transparency; and significant detrimental impacts on the numbers and species of fish. The State has established that hundreds of thousands of tons of poultry litter generated by defendants' chickens and turkeys are spread onto the lands of the Illinois River Watershed (IRW) each year. The State further established that a significant cause of the excess phosphorus in the waters of the IRW is the land application of litter from defendants' poultry.

I. Overview and History of the Case

The State of Oklahoma brought this case against eleven defendants: Tyson Foods, Inc.; Tyson Poultry, Inc.; Tyson Chicken, Inc.; Cobb-Vantress, Inc.; Cal-Maine Foods, Inc.; Cargill, Inc.; Cargill Turkey Production, LLC; George's, Inc.; George's Farms, Inc.; Peterson Farms, Inc.; and Simmons Foods, Inc.[1] The State alleges that the defendants have polluted and continue to

[1] Tyson Foods, Inc., Tyson Chicken, Inc., and Tyson Poultry, Inc. are Delaware corporations headquartered in Springdale, Arkansas, with operations in the IRW. [Doc. 1238 at 3, ¶¶6-7; Ct. Ex. 4, Hudson Dep., at 28:24-29:2]. Cobb-Vantress, Inc. is a Delaware corporation headquartered in Siloam Springs, Arkansas, with operations in the IRW. [Doc. 1238 at 4, ¶9]. Cal-Maine Foods, Inc. is a Delaware corporation headquartered in Jackson, Mississippi. Cal-Maine, which is in the business of producing shell eggs for market, has not had any production in the IRW since January 2005. [TR at 4412:7-10; OK Ex. 6082]. Cargill, Inc. is a Delaware corporation with its principal place of business in Minnesota. [Doc.

pollute the waters of the IRW with phosphorus and bacteria from the waste generated from defendants' poultry and applied to lands in the IRW. [Doc. 2641, p. 2 (Pretrial Order)].

The State asserted ten causes of action in its First Amended Complaint: 1) cost recovery under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); 2) natural resource damages under CERCLA; 3) a Solid Waste Disposal Act (SWDA) citizen suit; 4) state law nuisance (including nuisance *per se*); 5) federal common law nuisance; 6) trespass; 7) violation of 27A Okla. Stat. § 2-6-105 and 2 Okla. Stat. § 2-18.1; 8) violation of 2 Okla. Stat. § 10-9.7 and Oklahoma Administrative Code (OAC) § 35:17-5-5; 9) violation of OAC § 35:17-3-14; and 10) unjust enrichment/restitution/disgorgement. [Doc. 18].

Defendants filed motions to dismiss various counts of the First Amended Complaint, as well as answers denying the remainder of the State's allegations. [*See* Docs. 64-67, 75]. While those motions were pending, the State of Arkansas petitioned the United States Supreme Court seeking leave to file a bill of complaint to enjoin the lawsuit. Following the Supreme Court's denial of the petition, the State of Arkansas moved to intervene in this action. That motion was denied. [Doc. 1141].

1240 at 5, Cargill Answer to Sec. Am. Compl.]. Cargill transferred its turkey business in the IRW to Cargill Turkey Production, LLC, a wholly-owned subsidiary, in 2004, and currently has no contracts with any poultry growers in the IRW. [TR at 4849:13-15 (Alsup)]. Cargill Turkey Production, LLC ("CTP") is a Delaware corporation. [Doc. 1241, CTP Answer to Sec. Am. Compl., at 5]. CTP processes turkey under the brand name Honeysuckle White, among others. [TR at 4896:5-10]. George's, Inc. is an Arkansas corporation that contracts with 27 independent growers in the IRW, three of which are located in Oklahoma and 24 of which are located in Arkansas. [TR at 3026:6-9 (M. Henderson)]. George's also owns one farm in the Arkansas portion of the IRW, and it operates nine other farms, which it leases but does not own, that are located in the Arkansas portion of the IRW. [TR at 3024:16-3026:5 (M. Henderson)]. George's Farms, Inc., is a wholly owned subsidiary of George's, Inc. Peterson Farms, Inc. is an Arkansas corporation. [TR at 4841:14-4842:3 (Houtchens)]. All of Peterson's operational assets were located in Decatur, Arkansas, which is outside the boundaries of the IRW. [TR at 4841:14-4842:3 (Houtchens)]. Peterson has no continuing relationship with poultry operations in the IRW, having sold its broiler production business to Simmons Foods in July 2008. Most of its contract growers in the IRW signed contracts with Simmons Foods [OK Ex. 0827 at 2; TR at 4786:1-4787:13 (Houtchens)]. Simmons Foods, Inc. is a family owned and operated Arkansas corporation with its headquarters in Siloam Springs, Arkansas. [TR at 4119:9-15; 4119:25-4120:8; 4121:23-25].

Meanwhile, defendants filed two third-party complaints naming over one hundred sixty individuals, entities and municipalities for contribution and indemnity due to their activities causing the release of phosphorous and hazardous substances into the Illinois River. [Doc. 80, 82]. The State moved to sever or stay the proceedings with respect to the third-party complaints and the court granted the motion.

At hearings on the motions to dismiss, the court dismissed the State's claim under 27A Okla. Stat. § 2-6-105 to the extent the State sought to affix liability for conduct occurring in Arkansas. [Docs. 1187, 1206]. The court also dismissed the trespass claim, but granted leave to re-plead. The State then filed a Second Amended Complaint [Doc. 1215] re-pleading the trespass claim. Defendants filed a motion to dismiss the re-pled claim, and the court denied the motion.

The State then filed a motion for preliminary injunction under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6972(a)(1)(B), asserting that fecal bacteria from the disposal of poultry waste generated by defendants' birds was causing an imminent and substantial endangerment to human health. Following an eight-day evidentiary hearing, the court denied the motion, finding in part:

> The evidence produced to this Court reflects that fecal bacteria in the waters of the IRW come from a number of sources, including cattle manure and human waste from growing numbers of human septic systems in that area's karst topography. The record reflects levels of fecal bacteria at similar levels in rivers and streams throughout the State of Oklahoma, including waterways in whose watersheds the record does not evidence similar application of poultry waste. At this [stage of] the action, the State has failed to meet the applicable standard of showing that the bacteria levels in the IRW can be traced to the application of poultry litter.

Oklahoma v. Tyson Foods, Inc., 2008 WL 4453098, at *4 (N.D. Okla. Sept. 29, 2008). The State appealed to the Tenth Circuit, and the Circuit affirmed the order denying preliminary injunctive relief. *Oklahoma v. Tyson Foods, Inc.,* 565 F.3d 769 (10th Cir. 2009).

Defendant poultry companies moved to dismiss the State's claims for damages on the ground that the Cherokee Nation was a required party that had not been joined. The State argued that the Nation was not a required party but had negotiated an agreement in which the Nation purportedly assigned the State its interests in the litigation. The court ruled that the agreement was invalid and granted the defendants' motion, restricting the State to injunctive and other equitable relief. In doing so, the court dismissed the State's CERCLA claims, its claim for unjust enrichment and its claims for damages under Oklahoma's laws of nuisance and trespass, and under the federal common law of nuisance. *Oklahoma v. Tyson Foods, Inc.*, 258 F.R.D. 472 (N.D. Okla. 2009).

Nineteen days before trial, the Cherokee Nation sought to intervene. This court denied the motion as untimely. The Cherokee Nation appealed, and the Tenth Circuit affirmed. *Oklahoma v. Tyson Foods, Inc.*, 619 F.3d 1223 (10th Cir. 2010).

The State seeks equitable relief against the defendant poultry companies on the following claims set forth in the Final Pretrial Order:

1. violation of RCRA, 42 U.S.C. § 6972;
2. state law public nuisance and state law nuisance *per se*;
3. federal common law nuisance;
4. trespass; and
5. violations of 27A Okla. Stat. § 2-6-105 (Pollution of state air, land or waters – Order to cease) and 2 Okla. Stat. § 2-18.1 (Pollution of air, land, or waters – Order to cease – Administrative penalty).

[Doc. 2641, Pretrial Order at 2]. With respect to the RCRA, nuisance, trespass and 2 Okla. Stat. § 2-18.1 claims, the State seeks injunctive/equitable relief, including but not limited to abatement, remediation, and costs associated with quantifying the amount of remediation. With respect to the

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306. Because defendants' contracts are typically short-term, growers have no assurance they will continue to receive birds from defendants for a long enough time to cover the 20 to 30 year economic payback period on their investment in grow houses and equipment. [TR at 6778:17-6779:3 (Taylor)].

307. Because the defendants' contracts are similar in most respects, switching from one integrator to another would not materially change a grower's circumstances. [TR at 6776:321, 6768:10-23 (Taylor)].

308. There appears to be no dispute that defendants' vertical integration business model has transferred certain market risk—including the risk of fluctuation in prices of chicks, feed, and mature birds—from the growers to the poultry integrators. [TR at 10117:17-10118:9 (Rausser)]. Nevertheless, growers must make significant long-term investments to raise birds for which there is no open market, no guarantee of long-term continued placement of birds (so that the long-term investment can be recaptured), and only a limited number of integrators with which growers can do business. [*See* FF. ##305-307]. In sum, the transfer of market risks from growers to integrators comes at a price.

309. Defendants' expert, Dr. Gordon Rausser,[22] does not dispute that defendants have potential leverage over growers, but opines that the integrators have not actually exercised that leverage, and that, in fact, exercise of that control would be counter to defendants' economic interests. [TR at 10185:25-10186:16; 10139:16-10140:1; 10125:15-10126:2 (Rausser)]. Further,

[22] Dr. Rausser has a Ph.D. in agriculture and resources economics and mathematical statistics. [TR at 10107:21-23 (Rausser)]. He holds the position of Robert Gordon Sproul Distinguished Professor at the University of California at Berkeley. [TR at 10108:5-8 (Rausser)]. He has served as editor of the *Annual Reviews of Resource Economics* and the *American Journal of Agricultural Economics,* and as associate editor of the *Journal of the American Statistical Association* and the *Journal of Economic Dynamics and Control.* [TR at 10110:1-11 (Rausser)]. He served for two years as senior economist on the President's Council of Economic Advisors and for three years as chief economist of the Agency for International Development. [TR at 10111:1-14 (Rausser)].

various growers testified that they consider themselves to be independent. [TR at 4598:15-4599:10 (Saunders); TR at 3926:22-3927:4 (Collins)].

310. However, as set forth above, the actual structure of the integrator/grower relationship, including the growers' long term investment burden, significantly limits the growers' independence.

2. Characteristics, Concentration and Locations of Operations in the IRW

311. Broilers, breeders, layers, pullets, and turkeys are raised in the IRW; the overwhelming majority of the birds are broilers. [TR at 1779:12-1780:9 (Fisher)].

312. As previously noted, a typical operation has about four grow houses. [*See* TR at 1779:4-5 (Fisher); TR at 6777:6-7 (Taylor)]. Each grow house typically houses approximately 20,000 birds; five to six flocks per grow house are raised annually. [TR at 1781:2-15 (Fisher); TR at 3728:10-16 (Pigeon) (testifying he turns an average of five and a half flocks per year)]. Thus, at any given time, a typical broiler operation is housing 80,000 birds, and over the course of the year, 400,000 to 480,000 birds. [TR at 1781:20-1782:5 (Fisher)]. Chicks are delivered to grow houses within the first week after hatching, and the grow-out period is typically 49 days. [OK Ex. 6566b]. The target weight for broilers has gradually increased over the years from five to six pounds. [TR at 3727:21:3728:9 (Pigeon) (testifying that when he began raising broilers in 1995 the target weight was five pounds and as of 2009, the target weight was six pounds)]. Target weights for turkeys range from 16-25 pounds, and the number of flocks per year averages 3.4. [OK Ex. 6131A at CARTP100992].

313. The IRW has a high concentration of poultry feeding operations. [TR at 6765:3-11 (Taylor)]. Between 2000 and 2007, more than 1.1 billion birds belonging to defendants were raised in the IRW. [OK Ex. 2522].

314. There are approximately 1,900 active poultry houses in the IRW. [TR at 1723:24-1724:6 (Fisher)]. Of this total, approximately 425 poultry houses are located in Oklahoma and 1,455 are located in Arkansas. [OK Ex. 5665 at pp. 8, 11].

315. The locations of poultry growing operations affiliated with defendants are dictated largely by the locations of defendants' respective feed mills and processing plants. [TR 6781:11-6782:13 (Taylor); TR at 3038:4-3039:2 (Henderson); TR at 4256:8-22 (Murphy); TR at 3978:4-17, 3979:2 (Henderson); TR at 4798:3-6, 21-24 (Houtchens)].

3. Summary

316. The court finds, based on the foregoing findings of fact, that each defendant has maintained significant poultry operations in the IRW. Further, by virtue of their contracts and the vertically integrated structure of the business, each defendant maintains control over virtually all essential aspects of poultry production, including the activities of their contract growers.

K. Poultry Waste

1. Constituents of Poultry Waste

317. Poultry waste is a combination of poultry litter and poultry excrement. Poultry litter is a particulate matter that is used to absorb liquids from poultry excrement; generally, it is made of wood shavings or rice hulls, although wheat straw is sometimes used. [TR at 1802:15-19 (Fisher); TR at 3843:25-3844:5 (Pigeon)].

318. Poultry waste is a necessary byproduct of poultry growing. [TR at 4127:20-4128:1 (Simmons); TR at 3385:8-13 (Pilkington)].

319. Poultry waste is periodically removed from the grow houses through a procedure known as "cake-out" or "clean-out." A cake-out occurs between flocks and involves pulling a tractor-drawn machine through the house. The machine removes the layer of crusted, damp litter on top

of the bedding and sifts the dry litter back onto the floor. [TR at 3729:17-24 (Pigeon); TR at 3376:24-3377:1 (Pilkington)]. A clean-out is the removal of *all* litter from the poultry house. [DJX2654 at 0024].

320. Once poultry waste is removed from the grow house, it has no further role in growing poultry. [TR at 3385:14-18 (Pilkington); TR at 4077:1-7 (Anderson); Ct.'s Ex. 7 at 65 (Butler Dep.); TR at 4687:24-4688:2 (Maupin); TR at 3077:24-3078:3 (Henderson); TR at 4128:8-11 (Simmons); TR at 3903:7-10 (Collins); TR at 3903:7-10 (Collins); TR at 3735:18-22 (Pigeon); TR at 4454:19-22 (Storm)].

321. With the exception of defendant Peterson's post-1999 contracts, defendants' contracts with growers do not transfer ownership of the poultry waste to the growers. [TR at 6774:7-18 (Taylor); Ct.'s Ex. 7 at p. 4 (Butler Dep.); TR at 4687:12-23 (Maupin); OK Ex. 6269-A4; TR at 3027:2-12 (Henderson); OK Ex. 3051; TR at 4518:21-4519:7 (Bronson Stipulation); OK Ex. 6062]. Under Peterson's post-1999 contracts, which are non-negotiable, the grower owns the poultry litter.[23] Thus, growers are unable to decline ownership of and responsibility for poultry litter.

2. Constituents of Poultry Excrement

322. The constituents of poultry waste are a function of what is fed to the poultry. [TR at 1800:9-18 (Fisher)]. The two largest constituents of poultry feed are corn and soybeans. [TR at 1795:17-18 (Fisher)]. Poultry feed also contains milling and baking waste from the grains. [TR at 1795:18-19 (Fisher)]. In addition to the components of the grains, defendants might also add fats (*e.g.,* poultry fat recycled from processing); phosphorus compounds (*e.g.,* defluoridated phosphate,

[23] In a 1998 memorandum, Peterson's Director of Corporate Training, Ron Mullikan, predicted that regardless of whether the grower or the integrator owns the litter, he believed "that as time passes, we the integrator will be found liable for it and the [e]ffect it has on our environment" and "[t]his position will be driven by both environmental groups and the EPA." [OK Ex. 6378].

calcium phosphate); sodium chloride, potassium salts (*e.g.,* potassium sulfate, potassium chloride); amino acids; and trace minerals, including copper compounds. [TR at 1795:24-1796:9, 1797:1-23 (Fisher)]. Some defendants' feed contains arsenic compounds. [TR at 1798:22-1799:12 (Fisher)]. However, the Tyson Defendants discontinued adding arsenic compounds several years ago, and defendant Cal-Maine has never added arsenic compounds to its feed. [TR at 1799:16-20; 2694:20-22 (Fisher)].

323. Virtually all of this feed, as well as phosphorus supplements added to that feed, is imported into the IRW. [TR at 5838:2-5839:16 (Engel); TR at 1796:12-17 (Fisher); TR at 3428:25-3429:4, 3434:12-24 (Pilkington); TR at 4737:12-4738:2 (Maupin); TR at 3039:20-3041:2 (Henderson); TR at 4125:18-4126:14 (Simmons)].

324. Poultry waste generated by defendants' birds in the IRW contains, among other things, phosphorus, zinc, copper and arsenic. [TR at 1808:19-1809:1 (Fisher); OK Ex. 2523]. Analysis of samples of poultry waste generated by defendants' birds in the IRW showed that the average concentration of total phosphorus in the waste is 19,723.31 mg/Kg (or approximately two percent of the total weight of poultry waste on a dry weight basis); the average concentration of water soluble phosphorus is 1,699.11 mg/Kg; the average concentration of zinc is 488.47 mg/Kg; the average concentration of copper is 420.16 mg/Kg; the average concentration of arsenic is 19.75mg/Kg. [OK Ex. 2523; TR at 1812:14-1813:17 (Fisher)]. These values were similar to literature values and to the values of poultry waste samples from the neighboring Eucha-Spavinaw Watershed. [TR at 1817:6-1818:4; 1820:2-1821:10 (Fisher); OK Ex. 2524].

325. A comparison of the concentrations, as well as the concentration ratios, of phosphorus, copper, zinc and arsenic found in poultry waste with the concentrations and concentration ratios of such chemicals found in samples of cattle manure and wastewater treatment plant discharges in the

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alum application to Lake Tenkiller, (7) sediment removal from Lake Tenkiller, and (8) layered aeration of Lake Tenkiller. [TR at 8001:6-8006:25; 8008:14-8011:15 (King)].

595. In addition to King's recommendations, witnesses for the State advocated exportation of all poultry litter outside the watershed for application to phosphorus-deficient soil, and lake aeration to improve the fish habitat. [TR at 1514:7-12; 1547:2-18 (Phillips); TR at 7897:14-22 (Welch)].

III. Conclusions of Law

1. Remaining for adjudication in this case are the State's claims for injunctive relief for violation of Oklahoma statutory public nuisance law, federal common law nuisance, and common law trespass, its claims for injunctive relief and penalties under 27A Okla. Stat. § 2-6-205, and its claim for injunctive relief under 2 Okla. Stat. § 2-18.1.

A. Standing

2. The State asserts it has standing on the basis of sovereign and quasi-sovereign interests. *See* Doc. 1822.

3. A state, in its capacity of quasi-sovereign, has "an interest independent of and behind the titles of its citizens, in all the earth and air within its domain." *Georgia v. Tenn. Copper Co.,* 206 U.S. 230, 237 (1907). Further, "the state, as quasi-sovereign and representative of the interests of the public, has a standing in court to protect the atmosphere, the water, and the forests within its territory, irrespective of the assent or dissent of the private owners of the land most immediately concerned." *Hudson Cnty. Water Co. v. McCarter,* 209 U.S. 349, 355 (1908). The State may sue as *parens patriae* to protect its citizens against "the pollution of the air over its territory; or of interstate waters in which the state has rights." *Satsky v. Paramount Commuc'ns, Inc.,* 7 F.3d 1464, 1469 (10th Cir. 1993) (citations omitted).

4. The State has standing to pursue its statutory public nuisance, federal common law nuisance and statutory anti-pollution violation claims (27A Okla. Stat. § 2-6-205 and 2 Okla. Stat. § 2-18.1) based on its quasi-sovereign interests. Additionally, 27A Okla. Stat. § 2-3-504(F)(1) and (2) and 2 Okla. Stat. § 2-16(B) give the Attorney General the authority to sue on behalf of the State for these statutory violations.

5. The State asserts standing to pursue its trespass claim based on its sovereign interests. The State relies in part on 60 Okla. Stat. § 60(A), which provides:

> Water running in a definite stream, formed by nature over or under the surface, may be used by the owner of the land riparian to the stream for domestic uses . . ., but he may not prevent the natural flow of the stream, or of the natural spring from which it commences its definite course, nor pursue nor pollute the same, as *such water then becomes public water and is subject to appropriation for the benefit and welfare of the people of the state*, as provided by law[.]

Id. (emphasis added). The State claims a possessory property interest in waters flowing in definite streams in the Oklahoma portion of the IRW.

6. Defendants argue the State lacks standing to assert its trespass claim because it cannot claim *exclusive* possession of the waters. As the court previously observed, the Cherokee Nation also claims a substantial ownership interest in the waters of the IRW in Oklahoma. *See Oklahoma v. Tyson Foods, Inc.,* 258 F.R.D. 472, 476-78 (N.D. Okla. 2009). Further, the court concluded the State did not have standing as a quasi-sovereign to assert a claim for damages for injury to lands and natural resources in the IRW that fall within the Cherokee Nation's sovereign interests. *Id.* at 483. However, with respect to the claim at issue, the State is seeking injunctive relief, and it asserts a possessory interest in the waters of the IRW. The State's trespass claim does not require that it hold exclusive possessory rights. The State need only establish it has a right to the waters of the IRW superior to defendants' right. *See Lambert v. Rainbolt,* 250 P.2d

459, 461 (Okla. 1952) (finding "occupancy and possession appears to be sufficient to make out a case against anyone, except the rightful owner").

7. The record reflects that the State, at a minimum, regulates, manages and controls the waters of the IRW within Oklahoma.

8. The court concludes as a matter of law that the State's interests in the waters of the IRW within Oklahoma are superior to defendants' interests, and the State, therefore, has the requisite property interest to maintain its trespass claim for injunctive relief against defendants.

B. Causation/Liability Issues

9. The State alleges that phosphorous contained in land-applied poultry litter runs off fields throughout the IRW and finds its way to rivers, streams, and groundwater, where it injures water quality and aquatic populations. Defendants assert the State has not met its burden to prove that phosphorous from land applications of poultry litter for which defendants are legally responsible reaches the waters in the Oklahoma portion of the IRW used for recreation or drinking water in quantities or a form sufficient to cause any of the State's alleged injuries. This argument raises a number of sub-issues, including (1) whether defendants can be held liable for contamination from runoff of poultry litter spread by their growers; (2) whether the State must prove that defendants polluted the IRW by direct evidence; and (3) whether the State must prove what portion of the harm each defendant contributed.

1. Liability for Litter Spread by Growers

10. The State argues defendants are vicariously liable for phosphorus in IRW waters resulting from runoff from land application of their growers' poultry litter. This issue was addressed in *City of Tulsa v. Tyson Foods, Inc.,* 258 F. Supp. 2d 1263 (N.D. Okla. 2003), *vacated in connection with settlement*. There, the City of Tulsa sued Tyson Foods, Inc. and other poultry

industry defendants, alleging that the acts and omissions of the defendants polluted lakes from which Tulsa drew its water supply. As here, the plaintiff alleged that land application of poultry litter by contract growers for the poultry defendants resulted in eutrophication of the lakes from excess phosphorus loading. *Id.* at 1297. And as here, th defendants argued that their growers were independent contractors, and they were not vicariously liable for the growers' actions. *Id.* The court found that while there were factual disputes about the degree of control each defendant exerted over its growers, the integrators could be held liable. *Id.* Citing Restatement (Second) of Torts § 427B,[41] the court held that the Poultry Defendants were vicariously liable for any trespass or nuisance created by their growers because "they were aware that in the ordinary course of doing the contract work, a trespass or nuisance was likely to result." *Id.* at 1296-97.[42]

11. Here, as in *City of Tulsa,* the defendants knew their growers, in the ordinary course of their work for defendants, spread poultry litter on the land in the IRW, and knew or should have known no later than the late 1990s that their growers' land application of litter was a primary source of the excess phosphorus in the waters of the IRW. Once on notice, defendants had a duty to abate the nuisance and put a stop to the trespass, neither of which they have done. *City of*

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[41] Section 427B provides:

> Work Likely to Involve Trespass or Nuisance
>
> One who employs an independent contractor to do work which the employer knows or has reason to know to be likely to involve a trespass upon the land of another or the creation of a public or a private nuisance, is subject to liability for harm resulting to others from such trespass or nuisance.

Restatement (Second) Torts § 427B (1965).

[42] The court views *City of Tulsa* as persuasive authority. The decision was vacated by unopposed motion solely as part of the settlement of the action. *See City of Tulsa,* Case No. 4:01-cv-00900, Doc. 472 and Doc. 473, ¶8.

Tulsa, 258 F. Supp. 2d at 1295-96. Therefore, they are liable for any trespass or nuisance created by their growers. *Id.* at 1296.

2. Concurrent Tortfeasor Liability

12. The State alleges defendants are concurrent tortfeasors. As the Oklahoma Supreme Court has explained:

> Tortfeasors are classified as concurrent tortfeasors when their independent acts concur to produce a single or indivisible injury. In other words, in the case of joint tortfeasors some type of concert of action (or omission) is required, while in the case of concurrent tortfeasors such concert is lacking, but a single or indivisible injury or harm is nonetheless produced. Notwithstanding the lack of concerted action and even though the act of one may not have alone caused the injury or brought about the result, it has long been recognized in Oklahoma that concurrent tortfeasors, like joint ones, are each responsible for the entire result if the patient is free from negligence.

Kirkpatrick v. Chrysler Corp., 920 P.2d 122, 126 (Okla. 1996) (citations omitted). *See also Harper-Turner Oil Co. v. Bridge,* 311 P.2d 947, 952 (Okla. 1957).

13. An injury is indivisible when it is incapable of apportionment. *See Johnson v. Ford Motor Co.,* 45 P.3d 86, 91 (Okla. 2002). Here, as in *City of Tulsa*, the State alleges a single indivisible injury. *See City of Tulsa,* 258 F. Supp. 2d at 1297.

14. "With respect to environmental nuisance, such as pollution of a stream or pollution of the air surrounding a community, courts have commonly found that such pollution constitutes an indivisible injury." *Herd v. Asarco, Inc.,* 2003 U.S. Dist. LEXIS 27381, at *41 (N.D. Okla. July 11, 2003), *vacated in part by Herd v. Blue Tee Corp.,* 2004 U.S. Dist. LEXIS 30673 (N.D. Okla. Jan. 13, 2004)[43] (citing *Union Texas Petroleum Corp. v. Jackson,* 909 P.2d 131, 149-50 (Okla. Civ. App. 1995) (saltwater contamination of city's water supply); *Harper-Turner Oil Co. v. Bridge,* 311 P.2d 947, 950-51 (Okla. 1957) (contamination of water well by oil well); *United*

[43] The court's July 11, 2003 order was vacated as to two defendants only after those defendants settled with plaintiffs, based on unopposed motion. *See* Case No. 01-CV-891-H(C), Doc. 752, N.D. Okla. (2003).

States v. Pesses, 120 F. Supp. 2d 503, 507 (W.D. Pa. 2000) (hazardous substances of cadmium, chromium, copper, lead, magnesium, mercury, nickel, thorium and zinc, some of which was released into the air, soil and water, combined to form indivisible injury).

15. The party claiming an injury is divisible bears the burden of proving it. *See* Restatement (Second) of Torts § 433B(2) ("Where the tortious conduct of two or more actors has combined to bring about harm to the plaintiff, and one or more of the actors seeks to limit his liability on the ground that the harm is capable of apportionment among them, the burden of proof as to the apportionment is upon each such actor."); *Union Texas Petroleum Corp.,* 909 P.2d at 149-50.

16. Even when the principal injury is indivisible and therefore incapable of apportionment, the plaintiff bears the burden of presenting sufficient evidence to prove that "each defendant's act was a contributing factor in producing the plaintiff's injuries." *Johnson,* 45 P.3d at 91; *see also Lee v. Volkswagen of America, Inc.,* 688 P.2d 1283, 1289 (Okla. 1984); *Harper-Turner Oil Co.,* 311 P.2d at 952 ("[O]ne cannot be held to be a joint tort-feasor unless there is some evidence to connect him with the cause of the injury complained of.").

17. This court concurs with the standard for causation articulated in *City of Tulsa*: "[P]laintiffs must show that each defendant contributed to phosphorus loading in the Watershed and that the phosphorus in the Watershed has resulted in the harm and damages sustained by plaintiffs." *City of Tulsa,* 258 F. Supp. 2d at 1300.[44]

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[44] Contributory negligence is not a defense to an intentional tort claim. *City of Tulsa,* F. Supp. 2d at 1301 (citing the Restatement (Second) of Torts § 825, cmt. d (1965)); *Cities Serv. Oil Co. v. Merritt,* 332 P.2d 677, 685 (Okla. 1958). Here, as in *City of Tulsa,* plaintiff has asserted the intentional torts of nuisance and trespass. Thus, evidence showing that the State has contributed to phosphorus loading in the IRW does not, as a matter of law, operate as a defense to the State's claims of nuisance and trespass.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

1. STATE OF OKLAHOMA, ex rel. GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma and	)
2. OKLAHOMA SECRETARY OF ENERGY AND ENVIRONMENT KEN McQUEEN, In his capacity as the TRUSTEE FOR NATURAL RESOURCES FOR THE STATE OF OKLAHOMA,	)
PLAINTIFFS,	)
vs.	) **No. 05-CV-329-GKF-SH**
1. TYSON FOODS, INC., **2. TYSON POULTRY, INC.,** **3. TYSON CHICKEN, INC.,** **4. COBB-VANTRESS, INC.,** **5. CAL-MAINE FOODS, INC.,** **6. CARGILL, INC.,** **7. CARGILL TURKEY PRODUCTION, LLC,** **8. GEORGE'S, INC.,** **9. GEORGE'S FARMS, INC.,** **10. PETERSON FARMS, INC., and** **11. SIMMONS FOODS, INC.,**	)
DEFENDANTS.	)

JOINT STATUS REPORT

On this ninth day of June 2023, the Parties jointly submit this status report:

1. The Parties last met on March 17, 2023, for a status conference before this Court.

2. Pursuant to this Court's directive, the Parties continue to engage in negotiations to resolve this matter.

3. The Parties wish to pursue mediation facilitated by a neutral, mutually agreed third-party.

4. The Parties have agreed to mediation before retired 10th Circuit Judge Deanell Reece Tacha and propose to mediate at a time in the near future that is convenient for the mediator

and the Parties.

5. The Parties request that the Court order mediation with the understanding that the Parties will submit a status report within 14 days following the conclusion of the mediation.

Respectfully,

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CERTIFICATE OF SERVICE

I certify that on the 9th day of June 2023, I electronically transmitted the attached document 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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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/: A. Scott McDaniel*__________________

UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,)
)
PLAINTIFFS,)
)
vs.) Case No. 05-CV-0329-GKF-SH
)
)
TYSON FOODS, INC., et al.,)
)
DEFENDANTS.)
________________________________)

TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE GREGORY K. FRIZZELL

UNITED STATES DISTRICT JUDGE

FEBRUARY 27, 2026

Reported by: **Laura Griffin, RMR-CRR, United States Court Reporter**

Pages Omitted

mootness of an appeal by reason of settlement generally does not justify vacatur of an underlying judgment."

So isn't George's having unsuccessfully rolled the dice now attempting to wash away by a settlement-related vacatur an unfavorable outcome?

MR. DRUMMOND: So, you know, I agree *Bancorp* was concerned about this specific problem of the losing party engineering a settlement to strip for precedential value from an adverse ruling certainly.

The posture here is the opposite. The prevailing party, a sovereign state, is choosing to settle. And critically --

THE COURT: But it wouldn't be -- it would be a settlement so both parties would be proposing the post-judgment settlement justify a vacatur of the -- of the District Court judgment; correct?

MR. DRUMMOND: Right. That's materially different than *Bancorp*. We have both parties -- in *Bancorp* you had one party opposing the vacatur. Here you have both and I'm -- we believe *Bancorp* addressed whether an appellate court could vacate the judgment. The Supreme Court held generally it could not but then specifically stated that the appellate courts may remand the case with instruction to the district court to grant a request which it may do pursuant to Rule 60(b), and that's the precise path that we're asking the court to consider and take it from precluding relief that *Bancorp* contemplates.

THE COURT: Let me get Mr. George's -- since I'm accusing George's of trying to roll the dice and wash away an unfavorable outcome.

MR. GEORGE: No offense taken, Your Honor. I understand the purpose of the court's question and I believe I have permission for a limited waiver of Rule 408 sections with the confidentiality around our settlement negotiations to provide one fact that I think is responsive to your question.

THE COURT: Now are you limiting your waiver to this one fact?

MR. GEORGE: This one fact.

THE COURT: Can you do that? I think it's --

MR. GEORGE: We're going to try, your Honor, we're going to try.

Your Honor, the negotiations between George's and the state that culminated in the consent decree that was presented to Your Honor and the settlement beneath that actually began before Your Honor's December 19th judgment.

The parties have been engaged in rigorous discussions and were actually pretty close to an agreement, and so I point that out, Your Honor, simply to push back respectfully against the idea that George's was waiting to see what the -- what the outcome was going to be.

And in some respects, Your Honor, the judgment that came sort of midstream in those negotiations, you know, could have altered the leverage on both sides of the negotiations. And with George's respect -- or from George's perspective under this settlement we're paying 5.25 million dollars, which for a small company like ours is a significant amount of money. But it is particularly significant when considered against the fact that we have the lowest fine under the December 19th judgment that was entered of $10,000.

So despite that fact being interjected into the negotiations, Attorney General Drummond and I had a lot of conversation and his staff as well about whether we wanted to proceed with the deal that we had largely negotiated and we determined that it was the right conclusion to this case regardless of how we might have anticipated the reality -- the judgment versus the reality of what was entered.

THE COURT: Let me just --

MR. GEORGE: Please.

THE COURT: -- state my observation with regard to the fines.

I mean it was largely determined by the fact that the Oklahoma State Department of Agriculture's records are lousy, okay. And the only records that were submitted to this court that justified those fines were with regard to specific parcels of land that were in the record.

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

STATE OF OKLAHOMA *ex rel.* GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma and OKLAHOMA SECRETARY OF ENERGY AND ENVIRONMENT JEFF STARLING in his capacity as the TRUSTEE FOR NATURAL RESOURCES FOR THE STATE OF OKLAHOMA, Plaintiffs, v. TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS, INC., CAL-MAINE FOODS, INC., CARGILL, INC., CARGILL TURKEY PRODUCTION, LLC, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., and SIMMONS FOODS, INC., Defendants.	)	Case No. 05-CV-00329-GKF-SH

<u>JUDGMENT</u>

In its Findings of Fact and Conclusions of Law, this court found in favor of the State and against defendants on the State's claims of statutory public nuisance, federal common law nuisance, trespass, for violation of 27A Okla. Stat. § 2-6-105, and for violation of 2 Okla. Stat. § 2-18.1. Doc. 2979 at 213. Among other things, the court found that the waters of the Illinois River Watershed (IRW) have elevated phosphorus levels;[1] that the principal contributor of these elevated

[1] *See* Doc. 2979, FOF 130 ("The court finds that phosphorus concentrations in streams and rivers of the IRW in Oklahoma are elevated beyond natural or background levels …"); FOF 168 ("Based upon the foregoing factual findings, the court finds that the rivers and streams of the IRW have elevated phosphorus concentration levels above natural or background levels."); FOF 239 ("The

phosphorus levels in the waters of the IRW is run-off from poultry waste;[2] and that banked phosphorus in the soils of the IRW due to land application of poultry waste is a source of this phosphorus run-off.[3]

The court concluded that the defendants knew their growers, in the ordinary course of their work for the defendants, spread poultry litter on the land in the IRW, and knew or should have known no later than the late 1990s that their growers' land application of poultry waste generated by the defendants' poultry was a primary source of the excess phosphorus in the waters of the

court finds that Lake Tenkiller has become eutrophic, and this eutrophication is caused by phosphorus concentrations in the reservoir.").

2 *See* Doc. 2979, FOF 288 ("The court finds that nonpoint source phosphorus is a significant source of the phosphorus causing injury to the rivers and streams of the IRW and to Lake Tenkiller."); FOF 539 ("The evidence that phosphorus from land-applied poultry waste can and does run off into the waters of the IRW is convincing. As set forth below, the evidence is convincing that poultry waste is a significant source of the phosphorus causing injuries to the rivers and streams of the IRW and to Lake Tenkiller."); FOF 585 ("[I]t is clear that poultry waste is a major contributor to the levels of phosphorus in the waters of the IRW."); FOF 586 "([P]oultry waste is the principal contributor of the phosphorus causing injuries to the waters of the IRW.").

3 *See* Doc. 2979, FOF 81 ("[T]he agronomic critical level for phosphorus in the IRW is 65 lbs./acre STP, and the land application of poultry litter in the IRW in excess of this agronomic critical level is not protective of the environment and likely results in continued phosphorus pollution."); FOF 73 (finding that at an STP of 65 lbs./acre, there is 100 percent sufficiency for the growth of grass.); FOF 77 ("[A]t land application rates in excess of agronomic need, there is no crop benefit."); FOF 362 ("Land application of poultry waste has caused the soil in many areas of the IRW to have STP levels in excess of any agronomic need for phosphorus."); FOF 531 ("Phosphorus runoff calculations made in various coefficient-based studies of land applied poultry waste in the IRW are consistent in finding that approximately five percent of the phosphorus in land-applied litter in the IRW is expected to run off in a typical year."); FOF 535 ("[T]he court accords substantial weight to the evidence that some fraction of phosphorus from land applied poultry waste runs off to the waters of the IRW."); COL 49 ("And the overwhelming evidence establishes that phosphorus from land-applied poultry waste runs off the fields in environmentally significant quantities, causing injury to the waters of the IRW."); COL 61 ("[P]oultry waste continues to be applied to the phosphorus-saturated fields in the Oklahoma portion of the IRW, where an environmentally significant portion of the phosphorus contained in the waste runs off the fields and enters the waters of the IRW.").

IRW. Doc. 2979, COL 11. Once on notice, the defendants had a duty to abate the nuisance and put a stop to the trespass, neither of which they have done. Doc. 2979, COL 11 (citing *City of Tulsa v. Tyson Foods, Inc.,* 258 F. Supp. 2d 1263, 1295-96 (N.D. Okla. 2003), *vacated in connection with settlement*). Therefore, the defendants are liable for any trespass or nuisance created by their growers. *Id.* at 1296. Doc. 2979, COL 11 (citing *City of Tulsa*, 258 F. Supp. 2d at 1295-96).

The court directed the parties to meet and attempt to reach an agreement with regard to remedies to be imposed in this action. The parties participated in mediation with retired Tenth Circuit Chief Judge Deanell Reece Tacha but were unable to reach a settlement agreement.

The defendants then filed a motion to dismiss, alleging that conditions in the IRW had changed such that the State's claims were constitutionally and prudentially moot, and arguing that granting relief would violate due process. The Court denied the motion to dismiss, and set an evidentiary hearing to address the defendants' contention that conditions in the IRW had materially changed following the end of trial. Docs. 3038 and 3098.

Following a six-day evidentiary hearing, the Court entered an Opinion and Order in which it found, among other things, that: conditions have not materially changed since trial and the rivers and streams of the IRW and Lake Tenkiller continue to be impaired by phosphorus;[4] the

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[4] *See* Doc. 3161 at 6-7 ("[T]he court finds that the conditions of the IRW have not materially changed since trial, and the elevated phosphorus concentration levels have resulted in significant increases in algal biomass in the IRW's rivers and streams, which has impacted the aesthetics of the IRW's rivers and streams."); *Id.* at 7 ("[T]he court finds that conditions have not materially changed since trial and that phosphorus concentrations in the Illinois River, Flint Creek, and Barren Fork Creek continue to exceed the total phosphorus criterion applicable to scenic rivers and the aesthetics beneficial use is impaired for total phosphorus in violation of Oklahoma water quality standards."); *Id.* ("Lake Tenkiller continues to be eutrophic."); *Id.* at 9 ("[E]levated phosphorus levels continue to cause injury to Lake Tenkiller, as well as the biota therein."); *Id.* at 21 ("Because the phosphorus run-off from land-applied poultry waste continues to be a significant source of phosphorus which is causing actual and ongoing injury to the waters of the IRW, the conditions in the IRW have not materially changed since trial.").

defendants, except defendants Peterson and Cal-Maine, have continued operations in the IRW and have continued generating significant quantities of phosphorus-rich poultry waste throughout the IRW;[5] legacy phosphorus in the soil from past application of poultry litter continues to affect the water quality in the rivers and streams of the IRW;[6] "significant amounts of poultry waste generated by defendants' birds have been, and continue to be, land-applied in the IRW, in close proximity to the growers' farms;"[7] "phosphorus run-off from land-applied poultry waste continues to be a significant source of phosphorus causing injuries to the waters of the IRW;"[8] and "the continuing actual and ongoing injury to the waters of the IRW constitutes irreparable harm."[9] Thus, the court concluded "circumstances have not 'changed since the beginning of litigation that forestall any occasion for meaningful relief.' [quoting *S. Utah Wilderness Alliance v. Smith*, 110 F.3d 724, 727 (10th Cir. 1997).] Accordingly, this matter is not prudentially moot."[10]

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[5] *See id.* at 9-10 (listing the number of poultry feeding operations, number of poultry houses, and bird capacity per flock in the Oklahoma portion of the IRW); *Id.* at n. 6 (explaining that the Court had previously concluded that defendants Peterson and Cal-Maine had ceased poultry operations in the IRW); *Id.* at 12 ("[S]ince trial in this matter, each of the defendants—with the exception of defendants Peterson and Cal-Maine—has generated significant quantities of phosphorus-rich poultry waste in the IRW.").

[6] *See id.* at 15 ("[T]he court finds that 'legacy phosphorus' resulting from past application of poultry litter continues to affect the water quality of the rivers and streams of the IRW.").

[7] *Id.* at 16.

[8] *Id.* at 20.

[9] *Id.* at 21; *see also*, the court's corresponding conclusion in its Findings of Fact and Conclusions of Law, Doc. 2979 at COL 93 (stating "actual and ongoing injury to the waters of the IRW constitutes irreparable harm and warrants injunctive relief.").

[10] Doc. 3161 at 22.

The issues having been duly tried and the court having entered its findings of fact and conclusions of law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment shall be and is hereby entered in favor of the State and against the Defendants on the State's claims of statutory public nuisance, federal common law nuisance, trespass, for violation of 27A Okla. Stat. § 2-6-105, and for violation of 2 Okla. Stat. § 2-18.1.

The State seeks a permanent injunction as one of its remedies. "For a party to obtain a permanent injunction, it must prove: '(1) actual success on the merits; (2) irreparable harm unless the injunction is issued; (3) the threatened injury outweighs the harm that the injunction may cause the opposing party; and (4) the injunction, if issued, will not adversely affect the public interest.'" *Prairie Band Potawatomi Nation v. Wagnon*, 476 F.3d 818, 822 (10th Cir. 2007) (citation omitted). The State has proven both actual success on the merits and irreparable harm unless the injunction is issued. *See* FF&CL, Doc. 2979, pp. 217-218. As for the third and fourth requirements, the parties have now briefed their respective arguments. *See* Doc. 3164, pp. 21-26, and Doc. 3172, pp. 3-7.

Considering the balance of hardships between the State and the defendants, the court concludes that an injunction is warranted. The State persuasively asserts that the hardship that will befall the defendants is that they—like responsible businesses—will bear the costs of: first, remediating the extensive damage they've caused in the past; and second, managing more responsibly the poultry waste generated by their birds from this point forward. However, to balance the equities, and as set forth below, the court adopts a less stringent STP standard than that requested by the State, as the court finds from the evidence and testimony presented by the State at trial that nutrient utilization standards that are protective of the environment require only that animal manure applications do not result in soil test phosphorus levels that exceed 120. *See*

FF&CL, Doc. 2979, p. 33. Further, permitting soil test phosphorus levels up to 120 ensures that the vast majority of fields have sufficient phosphorus and prevents localized deficiencies due to soil variability. *Id.* Enforcement of the claims on which the State has prevailed by the injunction set forth below strikes a balance between the business interests of the poultry industry, but also the interests of the public in enforcement of the laws protective of the environment, specifically: statutory public nuisance, federal common law nuisance, trespass, 27A Okla. Stat. § 2-6-105, and 2 Okla. Stat. § 2-18.1.

As for whether the injunction, if issued, will adversely affect the public interest, the court finds and concludes that it will not. Though defendants call attention to the vested business interests of themselves, their contract growers, cattlemen, and hay farmers in the outcome of this litigation, both they and the public at large have an interest in the enforcement of the environmental claims on which the State has prevailed. The injunction set forth below is consistent with the regulatory scheme that third-party stakeholders are required to follow, as Oklahoma law applicable to this action plainly prohibits pollution of the waters of the State by poultry waste. As for the public at large, its interest is not only in the production of poultry products, but in the responsible disposal of poultry waste in compliance with the law.

The State seeks prohibitory injunctive relief in restricting land application of poultry waste, as well as mandatory injunctive relief to remediate damage, monitor the watershed, and enforce the injunction. "It is fundamental that mandatory injunctive relief should be granted only under compelling circumstances inasmuch as it is a harsh remedial process not favored by the court." *Citizens Concerned, etc. v. City & Cty. of Denver*, 628 F.2d 1289, 1299 (10th Cir. 1980). "[C]aution is especially important appropriate [when] the type of injunction sought is mandatory rather than prohibitory." *Signature Props. Int'l, Ltd. v. City of Edmond*, 310 F.3d 1258, 1269 (10th

Cir. 2002). The court finds the circumstances presented here to be compelling. First, remediation is necessary to mitigate the damage caused by defendants to the waters of the IRW by the land application of waste from defendants' poultry. Remediation can only be achieved in this highly contested lawsuit by adoption of a mandatory injunction. Second, the IRW is comprised of over a million acres and runs 145 miles from East to West through the Ozarks of Northwest Arkansas and Northeast Oklahoma. A master must be appointed to oversee the investigation and planning of the remediation to be performed over this large watershed, to oversee and implement the ongoing remediation, to monitor compliance with the restrictions imposed by this Judgment on the land application of defendants' poultry waste, and to monitor the progress of the remediation and the restrictions. This court cannot reasonably perform these tasks itself, particularly in the wake of the *McGirt* decision and the resultant explosion of this court's criminal docket. The need to appoint a master and necessary staff is therefore a compelling circumstance requiring an injunction which is, in part, mandatory.

Premises considered, the parties shall comply with the provisions of this Judgment set forth below.

1. **<u>Definitions</u>**

   a. "Company Farm" means any property now or hereafter owned or operated by any Defendant to raise and care for poultry owned by, or for the benefit of, that Defendant.

   b. "Contract Grower" means any person or other entity engaged in farming or other agricultural operations who contracts with any Defendant, to raise and care for poultry provided in the Watershed to the Contract Grower by any Defendant.

c. "Contract Grower Farm" means any property now or hereafter owned or operated by any Contract Grower, to raise and care for poultry provided inside the Watershed to the Contract Grower by any Defendant.

d. "Defendant" means Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., Cal-Maine Foods, Inc., Cargill, Inc., Cargill Turkey Production, LLC, George's, Inc., George's Farms, Inc., Peterson Farms, Inc., and Simmons Foods, Inc., and their successors and assigns (collectively "Defendants") and includes all entities owning or operating farms owned by any Defendant.

e. "Defendants' Birds" means all birds confined on the Defendants' Company Farms or the Defendants' Contract Grower Farms.

f. "Illinois River Watershed" ("IRW" or "Watershed") means the Illinois River Watershed encompassing approximately 1,069,530 acres located in northeastern Oklahoma (Adair, Cherokee, Delaware, and Sequoyah Counties) and northwestern Arkansas (Crawford, Benton, and Washington Counties), and depicted in State's Ex. 3351 at OSU0005147. Within the IRW are the Illinois River, as well as its major tributaries, including the Baron (aka Barren) Fork River, the Caney Creek, and the Flint Creek. State's Ex. 3351 at OSU0005160; see also Daily Trans., 10105:7-20 (Grip Testimony). The Watershed includes the 12,900 acre Tenkiller Ferry Lake. State's Ex. 3351 at OSU0005174.

g. "Poultry Waste" means all byproducts associated with the confinement of poultry, including excrement, feed waste, animal carcasses, and bedding materials.

h. "STP" means soil test phosphorus.

i. "Withdrawn Defendants" means Cal-Maine Foods, Inc., Cargill, Inc., Cargill Turkey Production, LLC, and Peterson Farms, Inc.

2. Remediation

a. Remediation is necessary to reduce phosphorus loading and abate the impacts of the pollution caused by the overapplication of Poultry Waste in the Watershed. Doc. 2979 at 213; *see also*, Doc. 3161 at 21 (concluding "the continuing actual and ongoing injury to the waters of the IRW constitutes irreparable harm" and stating "[i]n light of the ongoing injuries, remedial measures in this case 'will have some effect in the real world.'").

b. The Defendants are legally responsible for remedying the phosphorus pollution of the Watershed.

c. Remediation shall be conducted in a phased approach that includes remedial investigation, planning, implementation, and monitoring.

d. Phase I comprises remedial investigation and planning. To initiate Phase I, the court hereby orders a remedial investigation by a master (as detailed in Section 3) to assess the status of the Poultry Waste pollution in the IRW, including but not limited to current practices relating to the disposal of Poultry Waste generated by Defendants' poultry growing operations. Further, the court orders the development of a remediation plan by the master, based upon the findings of the remedial investigation and the evaluation of remediation options. Options to evaluate include, without limitation: buffer strips, increased treatment of drinking water, excavation, alum application to fields, crop and nutrient management with nitrogen supplementation, bank stabilization, constructed wetlands, sediment removal from

Lake Tenkiller, layered aeration of Lake Tenkiller, and exportation of Poultry Waste outside the Watershed for application to phosphorus-deficient soil. *See* Doc. 2979, FOF 594-595. Upon review and evaluation of the plan developed and submitted by the master, the court may take all appropriate and necessary actions, including ordering additional remedial investigation or ordering additional remediation planning. Upon the court's approval of the plan, the court shall order implementation of the plan.

e. Phase II will comprise implementation of one or more remediation plans that the court approves.

f. Phase III will comprise on-going monitoring of the projects implemented in furtherance of the one or more court-approved remediation plans.

g. Notwithstanding the provision of Section 2(f), each of the Phases I, II, and III shall include monitoring by the master of all aspects relevant to the remediation operations of those phases including, without limitation, monitoring of water quality, soil sampling, and Poultry Waste sampling.

h. The Defendants shall pay all costs and expenses associated with remediation, including costs and expenses for remedial investigation, planning, implementation, and monitoring.

i. The Defendants' payment obligations for remediation shall be joint and several. *See* Okla. Stat. §§ 832(A), (B) ("When two or more persons become jointly or severally liable in tort for the same injury to person or property . . . there is a right of contribution among them . . .. The right of contribution exists only in favor of the tort-feasor who has paid more than their pro rata share of the common liability . . ..").

3. **Watershed Monitoring and Enforcement**

a. The court shall appoint a master to implement and oversee this judgment.

b. The master shall be charged with overseeing the provisions of the Remediation set forth in Section 2 and the Restriction on Land Application of Poultry Waste set forth in Section 4.

c. The master shall retain technical experts and order testing, studies, and preparation of reports in furtherance of completing the work described by this judgment. The work product of the master shall be available to the public to the greatest extent permitted by law.

d. The master shall prepare the remediation plan(s) of Section 2(d) and propose such remediation plan(s) to the court for approval.

e. To assist with Watershed monitoring and enforcement duties, the master shall recruit, train, oversee, and monitor a watershed monitoring team (WMT). The WMT members shall have the experience, training, and qualifications prescribed by state or federal law or regulations for persons designated to prepare and oversee implementation of nutrient management plans or comparable plans designed to manage agricultural operations and preserve water quality.

f. The WMT's duties shall include:

i. monitoring compliance with this judgment;

ii. preparing nutrient management plans that comply with this judgment and all applicable laws, rules, and regulations;

iii. making periodic inspections of each Company Farm, Contract Grower Farm, and land application site to procure samples of Poultry Waste, soil, and/or water, and to conduct such other tests and make such other observations as are necessary for the WMT to determine compliance with this judgment and all applicable laws, rules, and regulations. The periodic inspections of each Company Farm, Contract Grower Farm, or land application site shall occur as often as is necessary to determine compliance, and shall be conducted at least once every year;

iv. The WMT shall inspect such relevant records or data as the Defendants or their Contract Growers may be required to maintain in order to demonstrate compliance with this judgment and all applicable laws, rules, and regulations; and

v. The WMT shall report, to the greatest extent permitted by applicable law,[11] to the court, the Oklahoma Office of the Attorney General, the Defendants, and the state regulatory agency or commission having jurisdiction under any applicable state law, all material or repeated violations or instances of non-compliance with this judgment or any applicable law, rule, or regulation.

g. Upon each one-year anniversary date of the establishment of the WMT until modified by court order, the WMT shall collect and disseminate, to the greatest extent permitted by applicable law, to the Oklahoma Office of the Attorney

[11] As the court has previously noted, with respect to the Arkansas portion of the IRW, due to statutory privacy protections, certain data regarding the poultry feeding operations is not publicly available. *See* Doc. 3161 at 10 (citing Ark. Code Ann. § 15-20-904(f) and testimony regarding Arkansas privacy protections).

General, the Defendants, and the master the following information regarding the Company Farms and Contract Grower Farms:

i. The name, mailing address, and phone number of the Contract Grower or the manager of the Company Farm;

ii. The location of the Contract Grower Farm or Company Farm, identified by physical address, county, public land survey description to at least the level of quarter section, latitude and longitude of the road entrance to the Contract Grower Farm or Company Farm, latitude and longitude of the northwestern-most poultry house, and GIS data, including all vector data and any underlying database and all raster data created or modified by the WMT for the Contract Grower Farm or Company Farm. The latitude and longitude data shall be provided in a form readily imported to a GIS system, shall be provided in decimal degree format (dd.ddddd), and shall be measured to at least five decimal places. All latitude and longitude measurements must be at least accurate within 4.9 meters (16 feet) of the actual location;

iii. The size and production of such Contract Grower Farm or Company Farm in terms of number of poultry houses; length, width, and height of each poultry house; type of poultry raised in poultry house; bird capacity of each poultry house; number of birds in standing inventory per flock; number of flocks per year; and amount of Poultry Waste produced per year;

iv. A description of all poultry house cake outs and clean outs, including (1) the dates of each cake out or clean out and (2) the fate of the removed

Poultry Waste with information identifying any storage location, the transporter, and the receiving location;

v. A description of the storage methods used to store the Poultry Waste;

vi. A description of the transportation methods used to transport the Poultry Waste;

vii. A description of the final disposition of the Poultry Waste, including:

1. The volume of Poultry Waste removed from the poultry operation, specified as measured in wet or dry tons;
2. The date of removal of such Poultry Waste from the poultry operation;
3. The quantity of Poultry Waste land-applied on each Company Farm or Contract Grower Farm, and the quantity of Poultry Waste which is transferred or sold from each Company Farm and Contract Grower Farm each year;
4. The identity and address of any person to whom Poultry Waste is transferred, including the certified litter applicator, the landowner, and any other recipient of the Poultry Waste;
5. The location and acreage of each application site, including the physical address, county, public land survey description to at least the level of quarter section, latitude and longitude of a point near the center of the application site, and GIS data, including all vector data and any underlying database and all raster data created or modified by the WMT for the application site. The latitude and longitude data

shall be provided in a form readily imported to a GIS system, shall be provided in decimal degree format (dd.ddddd), and shall be measured to at least five decimal places. All latitude and longitude measurements must be at least accurate within 4.9 meters (16 feet) of the actual location;

6. The soil test results and sampling date for each application site, including the STP results and sampling date;
7. The test results for the Poultry Waste, the sampling date, the tonnage of waste applied, and the application rate relevant to each application site;
8. The date of issuance of last nutrient management plan and the name of the WMT member who prepared the nutrient management plan for each Company Farm, Contract Grower Farm, and application site; and
9. A certification by a responsible official of the Company Farm or the Contract Grower, as applicable, that all Poultry Waste generated at the Company Farm or the Contract Grower Farm has been managed, stored, and disposed of in compliance with this judgment.

h. The master shall assume full and permanent responsibility to administer the employment and compensation of the WMT members, provide facilities and support for their responsibilities, and maintain records and information collected by the WMT in the performance of its duties. The WMT members shall remain subject to the oversight and monitoring of the master during the master's term of Court appointment.

i. Within thirty days after the date upon which this judgment is entered on the court's docket, the Oklahoma Office of the Attorney General and the Defendants shall confer and attempt to agree on a qualified candidate for master, or in the absence of such agreement, the Oklahoma Office of the Attorney General shall submit two nominees and the Defendants collectively shall submit two nominees to the court within the thirty-day period. The court shall be free to appoint any of these nominees or any other person or firm not nominated by the parties if the court deems appropriate or necessary.

j. The master shall at all times be deemed an adjunct to the court and shall serve at the pleasure of the court. For a period of at least thirty years after the appointment of the master, the Defendants shall pay, as set forth herein, the costs and expenses of the master incurred in the performance of the duties of the master as defined herein.[12] The term of the master's appointment and the Defendants' aforementioned payment obligations shall commence upon appointment by the court and end at least thirty years thereafter unless the court orders otherwise. Notwithstanding the term of at least thirty-years, if the master determines after ten years that the

[12] An extended period of oversight by the master for at least thirty years is warranted because remediation of the IRW will take decades. As noted in the court's Opinion and Order of June 17, 2025, Soil Scientist and Geomorphologist Gregory Scott testified that "following cessation of land application, it would take up to thirty years of hay production and removal to remove legacy phosphorus placed in the soil up to a STP of 300. During that time, if there was water available, phosphorus would continue to leak into the water." Doc. 3161 at 14. *See also* FF&CL, Doc. 2979 at ¶ 375.

Defendants have achieved full compliance with the judgment, the Defendants may file a motion with the court seeking to end the Defendants' obligations under this judgment and this court's jurisdiction thereover. Upon the filing of such motion, the court shall determine, after an evidentiary hearing at which the Defendants have the burden of proof, whether the Defendants have achieved full compliance. If the court finds that the Defendants have achieved full compliance, the court may end the Defendants' obligations at a time determined by the court. Likewise, notwithstanding the thirty-year term, if the master determines that the Defendants have not achieved substantial compliance with the judgment after twenty-nine years, the State may, at least ninety days before the end of the thirty years, file a motion with the court seeking to extend the duration of the Defendants' obligations under this judgment and this Court's jurisdiction thereover. Upon the filing of such a motion, the court shall determine, after an evidentiary hearing, whether the Defendants have achieved substantial compliance. If the court finds the Defendants have not achieved substantial compliance for at least the last full year preceding the hearing on the State's extension motion, the court may extend the term of the Defendants' obligations under this judgment and retain jurisdiction for a period of time determined by the court to ensure that Defendants come into compliance. If the court determines that the Defendants have achieved substantial compliance, the court may terminate the Defendants' obligations under this judgment at the thirty-year end date.

k. Any vacancy occurring for any reason during the term of the master shall be filled in the manner described in Section 3(i).

l. Within sixty days of the appointment of the master and annually thereafter, the master shall file with the court a proposed annual budget setting out the projected expenses of operating the master's office and the WMT. Subject to the consideration of any objections by the parties, the court will approve an annual budget for the master's office and the WMT. During the course of each annual budget period, the master shall seek amendments to this budget as needed.

m. The master shall keep a record of all costs and expenses associated with conducting the remedial investigation; the development of the remediation plan; the implementation of the remediation; the recruitment, hiring, and training of the WMT; the necessary compensation and state-mandated benefits required to employ qualified persons on the WMT; and the costs and expenses required by the WMT to carry out its monitoring and enforcement duties as provided herein. The master shall designate the costs and expenses as related to either "Remediation" or "Restriction on Land Application of Poultry Waste." The Defendants shall pay to an account set up and designated by the master all costs and expenses set forth above. The Defendants' payment obligation as to costs and expenses related to "Remediation" shall be joint and several. The Withdrawn Defendants shall have no payment obligation as to costs and expenses related to "Restriction on Land Application of Poultry Waste." All other Defendants' payment obligation as to costs and expenses related to "Restriction on Land Application of Poultry Waste" shall be joint and several. The funding obligation of the Defendants shall commence thirty days after the date of the entry of this judgment on the Court's docket and continue for a period of at least thirty years after the date of the appointment of the master unless the Court orders otherwise.

n. The Defendants shall pay those costs and expenses of the master and the WMT into an evergreen fund lasting not less than thirty years in the following manner:

    i. Within five business days of appointment of the master, the Defendants shall pay $10,000,000.00 into an account designated by the office of the master to pay the initial salaries and benefits of the master, the WMT, and costs and expenses associated with the performance of their duties under this judgment.

    ii. If at any time the Defendants are notified by the master that the balance of the account identified in Section 3(n)(i) falls below $5,000,000.00, the Defendants shall within ten business days replenish the account with a payment of $5,000,000.00 (adjusted for inflation by reference to the United States Department of Labor Consumer Price Index).

o. Unless otherwise directed by the court, the master shall report in writing to the court, the Oklahoma Office of the Attorney General, and the Defendants no less often than quarterly during the first two years of the master's tenure, and no less than semi-annually thereafter. To the extent permitted by applicable law, the reports to the Oklahoma Office of the Attorney General and the Defendants shall include, without limitation, apprising them of the status of preparation of nutrient management plans; all monitoring and enforcement activities, including the monitoring and enforcement of the restriction on land application of Poultry Waste and the remediation; and the costs and expenses incurred by the master and WMT during the reporting period. The reports to the court, which shall also be furnished to the Oklahoma Office of the Attorney General and the Defendants, shall be a summary of these matters, and shall primarily focus on issues relating to the implementation and enforcement of this judgment. The reports to the court shall be entered as a record available to the public on the docket of this case.

p. To assist with oversight and monitoring, the Defendants shall ensure, to the extent permitted by applicable law, that each Company Farm and Contract Grower Farm maintains easily visible, well-maintained signage at entrances to the farm property, indicating the name of the owner of the Company Farm, or the name of the owner of the Contract Grower Farm and the contracting company, and the contact phone number for the owner.

q. The master is entitled to judicial immunity in performing the master's duties as authorized by the orders of this court. The WMT and advisors to the master are entitled to judicial immunity in performing services at the direction of the master within the scope of this judgment or court-approved engagement.

4. <u>Restriction on Land Application of Poultry Waste</u>

a. A restriction of 120 lbs./acre STP for land application of Poultry Waste is appropriate and necessary to limit the land application of Poultry Waste to a level that provides the true agronomic need for plants in order to reduce the phosphorus run-off that pollutes the waters of the IRW.

b. Upon the date this judgment is recorded on the court's docket, the Poultry Waste generated by the Defendants' Birds shall not be applied in the IRW on land having an STP of 120 lbs./acre or greater.

c. Prior to any instance of land application in the IRW of Poultry Waste generated by Defendants' Birds, the land at issue must have STP results from testing: (1) conducted under the supervision of the master or the WMT, (2) within one year prior to the instance of land application, and (3) having a value of less than 120 lbs./acre STP. Such STP results shall be provided by the Defendants to the master and the WMT and shall be subject to verification by the master and the WMT prior to any instance of land application.

d. The application rate shall be limited to two tons or less of Poultry Waste per acre. Notwithstanding the two tons or less application rate limitation, land application of Poultry Waste shall not be allowed in the IRW at any rate that would cause the land to exceed 120 lbs./acre STP.

e. From and after the date this judgment is entered on the court's docket, the Defendants shall not continue to place birds with any Contract Grower who has been determined by the master to not be in compliance with the provisions of Section 4(b)-(d), and if ordered by the court, the Defendant shall terminate or refuse to renew its contract with the Contract Grower. The determination of a lack of compliance may be based, without limitation, on evidence such as reliable admission of the Contract Grower, reliable admission of a representative of a Defendant, observation, photographic evidence, documentary evidence, or data provided by a Defendant or a Contract Grower.

f. At all times after the entry of this judgment on the court's docket, the Defendants shall be responsible for ensuring the lawful disposal of all Poultry Waste generated by Defendants' Birds, in compliance with this judgment and all applicable laws, rules, and regulations. The Defendants shall take control of the Poultry Waste produced by the Defendants' Birds and ensure that the Contract Growers cooperate with the master, allow the master reasonable and necessary access to the Defendants' Company Farms and the Defendants' Contract Grower Farms, and implement any nutrient management plans. The Defendants shall be responsible for the removal of the Poultry Waste from the poultry houses, storage, transportation, and lawful disposal, including any land application of the Poultry Waste, whether that land application is inside or outside the IRW.

g. The Defendants shall ensure that their Contract Growers have access to sufficient Poultry Waste removal equipment, storage facilities, transportation methods, and disposal methods for the Poultry Waste generated by the Defendants' Birds. The Defendants themselves shall pay all costs associated with such removal, storage, transportation, and disposal, and shall not pass such costs on to their Contract Growers either directly or indirectly.

h. The Defendants shall hold their Contract Growers harmless for the costs of removal, storage, transportation, and disposal of Poultry Waste generated by the Defendants' Birds, whether the Defendants conduct those waste handling operations directly or contract with independent contractors to handle the Poultry Waste.

i. The Defendant contracting with a Contract Grower shall hold the Contract Grower harmless for any loss of income that may be attendant to the Defendant taking over the responsibility for safe disposal of the Poultry Waste in compliance with this judgment.

5. **Penalties and Attorneys Fees and Costs**

a. The court found the Defendants are both directly and vicariously liable for violation of the Environmental Quality Code at 27A Okla. Stat. § 2-6-105. Doc. 2979, COL 52, 60.

b. Specifically, the court found, "[the Defendants] have structured and conducted their business in the Oklahoma portion of the [Watershed] in a manner that causes pollution of the waters of the [Watershed]. Thus, they are directly liable for 'caus[ing] pollution of … waters of the state' and for 'caus[ing] to be placed … waste[s] in a location where they are likely to cause pollution.' … Each defendant has consciously concentrated a segment of its poultry operations in the Oklahoma portion of the environmentally-sensitive [Watershed]; placed large numbers of its birds in this concentrated area; and imported enormous amounts of phosphorus-laden feed into the area. Their birds annually generate hundreds of tons of poultry waste containing phosphorus the defendants have brought into the [Watershed]. Further, despite knowledge that the majority of the poultry waste will be land applied in close proximity to where it is generated, the defendants have not made provisions for the appropriate management of the waste." Doc. 2979, COL 60.

c. "As a result, poultry waste continues to be applied to the phosphorus-saturated fields in the Oklahoma portion of the [Watershed], where an environmentally significant portion of the phosphorus contained in the waste runs off the fields and enters the waters of the [Watershed]. Further, phosphorus from land-applied poultry waste that enters the waters of the [Watershed] constitutes 'pollution' for the purposes of Okla. Stat. § 2-6-105. … In sum, through their own independent conduct, defendants have 'cause[d] pollution of … waters of the state.' 27A Okla. Stat. § 2-6-105(A). Similarly, defendants are also directly liable under 27A Okla. Stat. § 2-6-105(A) because they have 'cause[d] to be placed … wastes in a location where they are likely to cause pollution of … waters of the state.'" Doc. 2979, COL 61.

d. Further, the court further found "[the Defendants] are vicariously liable for violation of 27A Okla. Stat. § 2-6-105(A), for the conduct of their growers." Doc. 2979, COL 62.

e. As a result of the Defendants' respective direct and vicarious liability under 27A Okla. Stat. § 2-6-105(A), *see* Doc. 2979, COL 52-62, the State is entitled to an award of penalties.

f. 27A Okla. Stat. § 2-3-504 – which includes the penalty portion of the Oklahoma Environmental Quality Code – became effective on July 1, 1993, and the parties agree that the State's claims for penalties are limited to conduct occurring in Oklahoma since July 1, 1993. Doc. 2979, COL 55.

g. Section § 2-3-504 of title 27A provides, in pertinent part:

> (A) Except as otherwise specifically provided by law, any person who violates any of the provisions of, or who fails to perform any duty imposed by, the Oklahoma Environmental Quality Code …
>
> ***
>
> (2) May be punished in civil proceedings in district court by assessment of a civil penalty of not more than Ten Thousand Dollars ($10,000.00) for each violation;

> ***
>
> (C) Any person assessed an administrative or civil penalty shall be required to pay, in addition to such penalty amount and interest thereon, attorneys fees and costs associated with the collection of such penalties.
>
> (D) For purposes of this section, each day or part of a day upon which such violation occurs shall constitute a separate violation.
>
> ***
>
> (H) In determining the amount of a civil penalty the court shall consider such factors as the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the defendant from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the defendant, the defendant's degree of culpability, and such other matters as justice may require.

h. Thus, § 2-3-504 requires that the State establish a "violation" and, further, "caps total daily penalties at $10,000." *NVI, LLC v. Okla. Dep't of Envt'l Quality,* 276 P.3d 1069, 1077 (Okla. Civ. App. 2012).

i. To determine the penalties to be imposed, the court adopts the "top down" methodology utilized by some courts to impose fines under the Clean Water Act and other statutes. *See Pound v. Airsol Co.*, 498 F.3d 1089, 1095 (10th Cir. 2007) (concluding that "top down" approach was not mandatory, but "satisfactory" to determine Clean Air Act penalties). Pursuant to the "top down" approach, the court "begin[s] by calculating the maximum possible penalty," then considers the statutory factors "to determine what degree of mitigation, if any, is proper." *Id.*

j. Looking first to the maximum possible penalty, the State contends that penalties may be assessed against a Defendant based on any field having an STP value of greater than 65 lbs./acre as reflected by Oklahoma Department of Agriculture, Food and Forestry (ODAFF) records from the date of each recorded violation to the present, or, at a minimum, against any Defendant having one or more fields having an STP value of greater than 65 lbs./acre, as reflected by ODAFF records, from the earliest date of such recorded violation until either withdrawal of operations from the Watershed or the filing of the State's Complaint on June 13, 2005. Based on what it describes as a "significant number" of soil test results in excess of 65 lbs./acre STP, the State asks the court to impose penalties in the amount of $10,000 per day against each Defendant for the period spanning from the individual Defendant's earliest documented soil test result in excess of 65 lbs./acre STP in ODAFF records—often in 1997 or 1998—to the date of the filing of the Complaint—June 13, 2005—or withdrawal from the Watershed, with each day being a separate violation. Thus, the State effectively asks that the court treat each separate violation as an ongoing violation.[13]

[13] The State's proposal would result in the following maximum possible penalties against each Defendant: (1) **Tyson Defendants** – $28,910,000.00 for the period from July 14, 1997 to June 13, 2005; (2) **Cargill Defendants** – $23,690,000.00 for the period from December 18, 1998 to June 13, 2005; (3) **George's Defendants** – $5,230,000.00 for the period from January 7, 2004 to June 13, 2005; (4) **Simmons** – $27,160,000.00 for the period from January 5, 1998 to June 13, 2005; and (5) **Cal-Maine** – $18,270,000.00 for the period from September 11, 1998 to September 11, 2003.

k. However, the State fails to establish that excessive STP levels continued in the individual tested fields beyond the soil test date. Although the court previously found that "[e]levated STPs decline slowly," Doc. 2979, FF 349, the State offered no additional evidence as to the rate of decline in the specific tested fields or factors affecting same. The court is limited to the evidence presented during the nonjury trial and December 2024 evidentiary hearing. Given the dearth of evidence regarding the specific tested fields having an excessive STP value and the length of time those excessive STP levels persisted, the State fails to establish ongoing violations for purposes of the statute.[14]

l. As previously stated, § 2-3-504 permits imposition of penalties "for each violation." Having reviewed the evidence, the State has demonstrated 248 total documented instances in the ODAFF files of fields having an STP value of greater than 65 lbs./acre, comprised of the following:

   i. **Tyson Defendants**[15] – 106 violations, resulting in a maximum possible penalty of $1,060,000.00. *See* [OKEX 2729B; OKEX 2730B; OKEX 6942G; OKEX 2565B; OKEX 2765B; OKEX 6942H; OKEX 2815B; OKEX 2816B; OKEX 2818B; OKEX 6942B; OKEX 2825B; OKEX 2830B; OKEX 2831B; OKEX 2834B; OKEX 2847B; OKEX 69421; OKEX 2856B; OKEX 2857B; OKEX 2858B; OKEX 6942C; OKEX

[14] Although the State has established ongoing injury to the IRW *as a whole* so as to warrant injunctive relief, penalties under § 2-3-504 are limited to specific violations and therefore require particularity.

[15] The Tyson Defendants are Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken Inc., and Cobb-Vantress, Inc. Defendants Tyson Foods, Inc. controls Defendant Cobb-Vantress, Inc., Defendant Tyson Chicken, Inc., and Defendant Tyson Poultry, Inc. *See* Court's Ex. 4 at 8 (Hudson Depo.).

6942C; OKEX 2859B; OKEX 2859C; OKEX 2860B; OKEX 2861B; OKEX 6942J; OKEX 2868B; OKEX 2688B; OKEX 2884B; OKEX 2885B; OKEX 2907B; OKEX 2707B; OKEX 2933B; and OKEX 2934B];

ii. **Cobb-Vantress** – 29 violations, resulting in a maximum possible penalty of $290,000.00. *See* [OKEX 2672B; OKEX 2864B; OKEX 2865B; OKEX 2695B; OKEX 2910B; OKEX 6942F; OKEX 2926B; OKEX 2703B; and OKEX 2930B];

iii. **Cargill Defendants**[16] – 22 violations, resulting in a maximum possible penalty of $220,000.00. *See* [OKEX 2772B; CAR 79B; CAR 82B; OKEX 2690B; OKEX 2890B; and OKEX 2891B];

iv. **George's Defendants**[17] – 22 violations, resulting in a maximum possible penalty of $220,000.00. *See* [OKEX 2644B; OKEX 2792B; OKEX 2685B; OKEX 2879B; and OKEX 6942E];

v. **Simmons** – 47 violations, resulting in a maximum possible penalty of $470,000.00. *See* [OKEX 2739B; OKEX 2768B; OKEX 2774B; OKEX 2780B; OKEX 2821B; OKEX 2835B; OKEX 2660B; OKEX 2658B; OKEX 2877B; OKEX 6942D; OKEX 2686B; OKEX 2880B; OKEX 2881B; OKEX 2899B; and OKEX 2928B]; and

[16] The Cargill Defendants are Cargill, Inc. and Cargill Turkey Production, LLC. Defendant Cargill Turkey Production, LLC is a wholly-owned subsidiary of Defendant Cargill, Inc. *See* Daily Trans., 4648:3-7; 4648:25-4649:4 (Ehrich Stipulation).

[17] The George's Defendants are George's Inc. and George's Farms, Inc. Defendant George's Inc. controls George's Farms, Inc. *See* Daily Trans., 3022:7-9 (Henderson Testimony).

vi. **Cal-Maine** – 22 violations, resulting in a maximum possible penalty of $220,000.00. *See* [OKEX 2798B; OKEX 6063B; OKEX 2855B; and OKEX 2914B].

m. Looking next to the statutory factors, as previously stated, the court must consider the following: the nature, circumstances and gravity of the violation or violations, the economic benefit, if any, resulting to the Defendant from the violation, the history of such violations, any good faith efforts to comply with the applicable requirements, the economic impact of the penalty on the Defendant, the Defendant's degree of culpability, and such other matters as justice may require.

n. The court finds significant the evidence that some of the tested soil fields did not exceed the Oklahoma-NRCS Code 590 standards. In nutrient limited watersheds, litter may not be applied to any land with an STP level greater than 300. The State first designated the Oklahoma portion of the Watershed as "Nutrient Limited" effective July 1, 2006. Prior to that time, the non-nutrient limited Code 590 standards applied to the Watershed, including the STP cap of 400 pounds per acre. Doc. 2979, FF 71.

o. Although the Oklahoma agricultural standards are insufficient to protect the environment and comply with Oklahoma's environmental laws, Defendants' efforts to satisfy the NRCS Code 590 standards demonstrate efforts to comply with certain applicable Oklahoma standards and warrant mitigation of penalties. Accordingly, the court declines to impose penalties for fields with STP levels below 400 prior to July 1, 2006, the date that the State first designated the Oklahoma portion of the Watershed as "Nutrient Limited."

p. As a result of the court's consideration of the "good faith efforts to comply with applicable requirements" factor, the court reduces the penalties to the following:

i. **Tyson Foods, Inc.** – 16 violations, resulting in a penalty of $160,000.00. *See* [OKEX 2729B at OKDA0000083; OKEX 2730B at OKDA0000257; OKEX 2825B at OKDA0008691, OKDA0008746, OKDA0008748, OKDA0008750, OKDA0008752, and OKDA0008754; OKEX 2856B at OKDA0013748, OKDA0013786, OKDA0013789, OKDA0013791, and OKDA0013792; OKEX 2858B at OKDA0013871; OKEX 2861B at OKDA0014113; and OKEX 2907B at OKDA0017894];

ii. **Cobb-Vantress** – 3 violations, resulting in a penalty of $30,000.00. *See* [OKEX 2864B at OKDA0014490, OKDA0014492; and OKEX 2926B at OKDA0019688].

iii. **Cargill Inc.** – 6 violations, resulting in a penalty of $60,000.00. *See* [OKEX 2772B at OKDA0003084 to OKDA0003087; CAR 79B at OKDA0010121 and OKDA0010144];

iv. **George's, Inc.** – 1 violation, resulting in a penalty of $10,000.00. *See* [OKEX 6942E at ODAFF (DEC07) 004896];

v. **Simmons** – 9 violations, resulting in a penalty of $90,000.00. *See* [OKEX 2739B at OKDA0000749, OKDA 0000751; OKEX 2774B at OKDA0003153 to OKDA0003155; OKEX 2780B at OKDA0003605; OKEX 2821B at OKDA0008407 to OKDA0008408; and OKEX 2928B at OKDA00019726]; and

vi. **Cal-Maine** – 7 violations, resulting in a penalty of $70,000.00. *See* [OKEX 2798B at OKDA0005575 to OKDA0005576; OKEX 6063B at OKDA0005575 to OKDA0005576; OKEX 2855B at OKDA00013649, OKDA0013651; and OKEX 2914B at OKDA0018790].

q. The court next considers the nature, circumstances, and gravity to the violations and finds that the violations are severe and have caused pollution in the IRW. Doc. 2979, COL 55, 60, 61. Thus, this factor does not warrant mitigation of penalties.

r. The State presented no evidence with respect to the economic benefit, if any, resulting to each Defendant from the violations or the economic impact of the penalty on the Defendants and therefore these factors are neutral.

s. The court previously considered the Defendants' history of violations as reflected in the ODAFF records in connection with the efforts to comply with applicable regulations factor. Further, given the irreparable harm caused to the Watershed as a result of Defendants' conduct, no additional mitigation is warranted based on Defendants' history.

t. Finally, the Defendants are highly culpable, as Defendants did little or nothing to monitor or control their growers' disposal of poultry waste. Doc. 2979, FF 360. Thus, the court declines to reduce penalties further.

u. Based on the foregoing, defendant Tyson Foods, Inc. shall pay to the Oklahoma Department of Environmental Quality Revolving Fund the penalty amount of $160,000.00, plus post-judgment interest accruing thereon at the rate of 3.58% from the date of entry of this judgment until paid in full. *See* 27A Okla. Stat. § 2-3-

504(G) ("Except as otherwise provided by law, administrative and civil penalties shall be paid into the Department of Environmental Quality Revolving Fund.").

v. Defendant Cobb-Vantress shall pay to the Oklahoma Department of Environmental Quality Revolving Fund the penalty amount of $30,000.00, plus post-judgment interest accruing thereon at the rate of 3.58% from the date of entry of this judgment until paid in full.

w. Defendant Cargill, Inc. shall pay to the Oklahoma Department of Environmental Quality Revolving Fund the penalty amount of $60,000.00, plus post-judgment interest accruing thereon at the rate of 3.58% from the date of entry of this judgment until paid in full.

x. Defendant George's, Inc. shall pay to the Oklahoma Department of Environmental Quality Revolving Fund the penalty amount of $10,000.00, plus post-judgment interest accruing thereon at the rate of 3.58% from the date of entry of this judgment until paid in full.

y. Defendant Simmons shall pay to the Oklahoma Department of Environmental Quality Revolving Fund the penalty amount of $90,000.00, plus post-judgment interest accruing thereon at the rate of 3.58% from the date of entry of this judgment until paid in full.

z. Defendant Cal-Maine shall pay to the Oklahoma Department of Environmental Quality Revolving Fund the penalty amount of $70,000.00, plus post-judgment interest accruing thereon at the rate of 3.58% from the date of entry of this judgment until paid in full.

aa. The State is entitled to an award of attorneys fees and costs. The amount of the award for the State's attorneys fees and costs will be separately determined by the court following subsequent briefing by the parties. This separate determination shall not impact the finality of this Judgment.

bb. The penalties detailed in Sections 5(p) through 5(z) are separate and distinct from those payments pertaining to the master, the WMT, and their activities as set forth in Section 3.

6. <u>Retention of Jurisdiction</u>

a. The court shall retain jurisdiction of this case for the purposes of enforcing the terms of this Judgment.

b. The orders entered by the court with respect to this Judgment, as provided herein or as otherwise may be entered by the court in the future, shall have the force and effect of binding orders, judgments, and law, and shall therefore govern the activities of the parties to the extent specifically addressed in such orders.

ENTERED at Tulsa, Oklahoma, this 19th day of December, 2025.

Gregory K. Frizzell

GREGORY K. FRIZZELL
UNITED STATES DISTRICT JUDGE

United States District Court
Northern District of Oklahoma

State of Oklahoma, et al., Plaintiffs, v. Tyson Foods, Inc., et al., Defendants.	))))))))))	**Civil No. 05-CV-0329 GKF-SAJ**

DECLARATION SUPPORTING DEFENDANTS' MOTION FOR STAY PENDING APPEAL

STATE OF ARKANSAS)
COUNTY OF WASHINGTON)

I, Mark Weathers, having been first duly sworn upon oath certify and state:

1. I am over the age of 18 years of age and have personal knowledge of the facts and matters stated herein.
2. I have worked in the poultry industry for 34 years. I am currently the Vice President of Operations for Simmons Foods, Inc. ("Simmons"). In my role at Simmons, and while employed at other poultry companies, I have regular contact with poultry growers in Arkansas, Oklahoma, and Missouri including growers located in the Illinois River Watershed ("IRW").
3. I am also poultry farmer and cattle farmer. I have raised cattle and poultry for over 31 years in. Over my 31 years as a farmer, I have had numerous conversations with other poultry growers and farmers.

4. During my 31 years as a farmer, I have both purchased and sold poultry litter for fertilizer. I have also used commercial fertilizer as fertilizer.
5. Using poultry litter as fertilizer produces denser and more nutrient-filled grass for cattle than commercial fertilizer use. Poultry litter contains organic matter which amends soil far superior to commercial fertilizer use.
6. Commercial fertilizer is generally more expensive than poultry litter.
7. Poultry farmers, cattle ranchers and row crop farmers in Arkansas, Oklahoma, and other areas depend on poultry litter for fertilizer, including in the IRW.
8. Poultry litter has always been the poultry grower's property. Poultry farmers who do not also raise cattle depend on the revenue from selling litter.
9. The December 19, 2025, Judgment (Dkt. 3192) requires Simmons to "take control" over poultry growers' litter. Simmons' contracts with growers do not permit Simmons to exercise control over the growers' property. Under Arkansas and Oklahoma law, growers have lawful control over their own property.
10. Simmons will suffer irreparable harm if Simmons seizes control of growers' property, because Simmons will be subject to suit for conversion, trespass, breach of contract, violation of Arkansas Deceptive Trade Practices Act, and other potential legal claims. If any such claims are successful, Simmons could be ordered to pay punitive and triple damages in addition to compensatory damages. Even if the claims are ultimately unsuccessful, Simmons will incur costs to defend the claims.
11. Simmons will also suffer immediate and irreparable financial harm in "taking control" over growers' litter because Simmons does not have personnel nor trucks, trailers, or other equipment for removing, hauling or applying poultry litter. Simmons will have to hire

personnel, purchase trucks, trailers and other equipment to remove, haul, and apply litter. In the alternative, Simmons will have to contract with third parties to provide these services. In either event, Simmons will incur additional expenses not included in its current cost structure.

12. In addition to paying for the costs of removing, hauling, and applying litter, Simmons is required to pay growers for the litter. These additional costs are not included in Simmons' cost structure.

13. Simmons will incur millions of dollars of additional operating expenses to pay growers for litter and purchase trucks and equipment or pay third parties to remove, haul, and apply litter.

14. In addition to the costs associated with purchasing, removing, hauling, and applying litter, Simmons will suffer additional costs to pay for the special master and his unlimited budget for the next thirty (30) years. The amount of costs is unknown because the State never provided any expert testimony or other evidence supporting any effective remediation actions, but it will be millions of dollars.

15. Simmons is required to deposit $10,000,000 immediately after the special master is appointed and continue paying millions of dollars for at least thirty (30) years.[1]

16. The Judgment does not permit Simmons to challenge any amount the special master demands. Consequently, Simmons could be charged hundreds of millions of dollars over the next thirty (30) years.

17. Simmons operates on tight margins. Simmons cannot absorb within its current cost structure the additional millions of dollars in costs it will incur under the Judgment.

[1] The Order applies to all Defendants but because the Court ordered joint and several liability, Simmons is responsible for 100%.

Simmons cannot stay in business operating at a loss. Consequently, Simmons will need to increase its prices to its customers.

18. Simmons cannot arbitrarily raise its customers' prices. On the contrary, Simmons' customers negotiate for the lowest prices possible. Additionally, most of Simmons' contracts with its customers are based on flat prices set for a year or more, negotiated in summer or fall for the following year or years. Simmons' contracts with its customers are already in place for at least 2026. Thus, Simmons cannot raise prices to cover its increased costs of complying with the Court's Judgment.

19. In addition, even when Simmons' existing contracts expire Simmons may not be able to increase its prices. Simmons competes with at least ten (10) other broiler chicken producers in addition to Tyson and George's. None of the other broiler chicken producers (other than Tyson and George's) are subject to the Judgment and therefore will not incur the additional operating costs Simmons will incur. Simmons' competitors will be able to offer lower prices than Simmons, thus putting Simmons at a significant competitive disadvantage.

20. In addition to suffering a competitive disadvantage for sales, Simmons is likely to suffer a competitive disadvantage with contracting with poultry growers. Simmons' competitors are not subject to the Judgment and do not have to take control over grower's litter or pay any special master or remediation expenses.

21. Poultry growers are very unhappy about the Judgment's deprivation of their property rights without due process. They are also upset about non-government third parties having unrestricted access to their farms.

22. Growers are free to contract with any of the many other broiler producers other than Simmons, Tyson, and George's. If they contract with any other broiler producer (or egg

producer) they can continue to use and sell poultry litter according to existing Arkansas and Oklahoma state laws and will not be subject to third parties having unfettered access to their farms. Poultry growers can terminate their contracts with Simmons any time they desire by providing 90 days' notice.

23. Simmons will suffer irreparable harm because even if the Judgment is reversed on appeal, Simmons will not be able to recover any of the millions of dollars paid to the special master or Simmons' expenses to purchase growers' litter and pay for its removal, transportation, and application.

Dated: December 29, 2025.

Mark Weathers

MARK WEATHERS

SUBSCRIBED AND SWORN TO before me this 29 day of December 2025.

Realene Atwood

NOTARY PUBLIC

REALENE ATWOOD
Notary Public - Arkansas
Benton County
Commission # 12395484
My Commission Expires Sep 15, 2033

MY COMMISSION EXPIRES:
9/15/33

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 05-CV-00329-GKF-SH
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

DECLARATION

I, Sheri Herron, do swear and affirm that the following facts are true and accurate and state that:

1. I am over eighteen (18) years of age. I am of sound mind, have never been convicted of a felony, and am competent to make this Declaration.

2. I hold a Bachelor's Degree in Environmental Resource Management from San Diego State University, a Master's of Science in Agronomy/Soil Science from the University of Arkansas, and a Ph.D in Soils and Agricultural Water Quality also from the University of Arkansas. I have nearly over decades experience working on agriculture, soils, and related water quality issues in Oklahoma and Arkansas, beginning my career in 1994 with the United States Department of Agriculture.

3. I am the Executive Director of BMPs, Inc., a non-profit entity established for the purpose of developing litter export systems to transport poultry litter from

poultry-raising areas in Oklahoma and Arkansas to markets where it can be used to good effect as a nutrient rich organic fertilizer.

4. For the past 22 years, BMPs, Inc. has worked diligently to establish such markets, and has seen steady growth and stabilizing in the market for litter exports. The below chart reports BMP's litter exports from the Illinois River Watershed since 2005:

Year	Tons	Year	Tons
2005	15,610.0	2015	104,556.3
2006	59,523.2	2016	117,123.7
2007	70,971.4	2017	112,864.5
2008	78,683.4	2018	116,799.6
2009	87,985.6	2019	115,067.9
2010	101,599.6	2020	114,961.8
2011	105,750.6	2021	114,511.8
2012	85,850.8	2022	129,054.6
2013	87,928.7	2023	118,418.8
2014	98,629.0	2024	104,901.0

Total Tons Exported - 1,940,792

5. Today, BMPs works with approximately 20 litter truckers and 4 primary litter clean out and loading crews. We have over 400 buyers in our database, spread across 4 states. The market for exported litter has grown significantly but remains fragile.

6. I have reviewed the Court's December 19, 2025 Judgment. The judgment has caused significant uncertainty and anxiety among litter haulers, clean-out crews, growers, and others involved in the poultry industry regarding the litter export market. The community with which I work finds the judgment to be unclear, unfair, and unworkable. For example, the judgment prohibits

applying litter in a manner that increases STP levels above 120. But if soils sampling immediately after litter application, STP levels always spike because it's impossible to separate the fresh litter from the soil being sampled, resulting in litter being analyzed along with the soil. Research by OSU scientists tracked the decrease in soil test phosphorus over time after applying poultry litter. It's very weather dependent, declining faster with rainfall infiltration of the nutrients, and higher biological activity in the soil in the warm months. I often recommend that farmers don't soil test for at least 6 months after applying litter to avoid any spikes. Read literally, the Court's judgment prohibits litter application on most fields.

7. Additionally, the Court's Judgment effectively bans litter application in the IRW for at least the next six to twelve months. I was responsible for training the Watershed Management Team put in place by the settlement in the Eucha-Spavinaw watershed litigation. There, it took at least six months before the team was hired and trained, and before I completed creation of the template for the NMPs. BMPs currently produces the majority of Oklahoma's nutrient management plans for poultry farms (OK NMPs), which are reviewed and approved by ODAFF. Our current wait time for soil and litter sample analyses at the OSU lab is approximately 2 months. The Court's order requiring the Special Master to be engaged, to hire a team, to undertake soils testing, and issue new plans before litter may be spread in the IRW, will take up to a year.

The Court's order thus imposes a full moratorium on litter application in the IRW for that period.

8. Since the Judgment was handed down, I have received dozens of phone calls directly, and have had many more reported to me by my contractors, raising these and other widespread concerns.

9. I personally have serious reservations about the litter export industry's ability to absorb and process the volume of litter the judgment result in being removed from the watershed. Additionally, I have worked for 22 years to build this industry, which is made up of dozens of small businesses and farms. I fear that the pressures from implementing the judgement all at once may collapse the system.

10. There is not currently sufficient transportation capacity to remove and export all litter from the IRW. Nor is there enough demand to receive all litter from the IRW for use elsewhere. That means that if all litter must be exported, then we will be shifting from an export-and-fertilize model to a litter-disposal model.

11. BMPs has worked to create nutrient neutral transportation systems. Currently, many truckers hauling litter out of the IRW haul corn to feed mills in the IRW. The availability of a backhaul market makes litter hauling more economically viable. There is not currently sufficient supply and demand to replicate this if all litter must be exported.

12. It is important to appreciate that not all poultry litter is the same. Litter removed from broiler houses generally has higher nutrient content, on account

of the feed used for broiler chickens, as well as because broiler house litter is windrowed and de-caked but otherwise left in the houses for much longer. Broiler litter is valued as a nutrient-rich organic fertilizer by row crop farmers, many located in Kansas and Missouri, who are willing to pay the cost to haul it long distance.

13. Litter from hen houses and pullet houses, on the other hand, has much lower nutrient levels, as the birds are fed a different nutritional diet. BMPs focus on exporting the more nutrient-dense broiler litter has resulting in an increase in local demand for hen and pullet litter. It is used primarily by beef cattle ranchers to fertilize fields of forage crops for cattle. Because pullet and hen litter is used locally, the crews use different equipment than used for exports. Pullet and hen litter is often loaded directly into spreader trucks and land applied within 5 to 10 miles of the poultry farm. Row crop farmers have no interest in transporting and using hen or pullet litter. Hen litter, moreover, is typically wetter, and thus heavier, than broiler and pullet litter, and therefore costs significantly more to transport.

14. Soils in the IRW are generally old and not suitable for growing grass for pasture and hayland. Trees are often removed from hayed areas and, without fertilization of some sort, the grasses thin and soil erosion increases. This can result in direct transport to streams and rivers of phosphorus bound in the soil. In order to maintain their cattle businesses, cattle ranchers have to fertilize. Commercial fertilizers have good nutrient content, but lack the organic

material that poultry litter contains. This organic material operates to hold the nutrients in place in the upper portions of the soil, allowing them to be bioavailable to the roots. The quantity of commercial fertilizer required to maintain a healthy stand of forage grass costs more than the price they will get for the cattle. If they are unable to use poultry litter, their fields will not provide sufficient forage for their cattle.

15. The judgment functionally requires all litter to be exported from the IRW. This will cause the price of litter paid to farmers to immediately and significantly decrease. It will also lower the price of litter to export markets as supply outstrips demand.

16. The litter export market is currently served by individual owner operators and small businesses. Many of these individuals have invested hundreds of thousands of dollars in equipment to allow them to engage in this business, and they reasonably assumed a certain return on their investment. As the figures above show, the litter export market has stabilized in recent years, making it more predictable and reliable.

17. The Court's order requires the defendants to take control of litter owned by their contract growers and to take care that it is properly handled. If the large corporate defendants enter the litter export market, that will also cause severe disruption in the existing market, most immediately displacing the small businesses currently serving the market. This causes me significant concern

given BMPs' Inc.'s efforts over the past 22 years to encourage those investments and the growth of these small businesses.

18. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Further Declarant sayeth not.

Executed on this 29th day of December 2025, at 8:35 Pm.

Sheri Herron

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

STATE OF OKLAHOMA *ex rel.* GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma and OKLAHOMA SECRETARY OF ENERGY AND ENVIRONMENT JEFF STARLING in his capacity as the TRUSTEE FOR NATURAL RESOURCES FOR THE STATE OF OKLAHOMA,

Plaintiffs,

v.

TYSON FOODS, INC.,
TYSON POULTRY, INC.,
TYSON CHICKEN, INC.,
COBB-VANTRESS, INC.,
CAL-MAINE FOODS, INC.,
CARGILL, INC.,
CARGILL TURKEY PRODUCTION, LLC,
GEORGE'S, INC.,
GEORGE'S FARMS, INC.,
PETERSON FARMS, INC., and
SIMMONS FOODS, INC.,

Defendants.

Case No. 05-CV-00329-GKF-SH

OPINION AND ORDER

This matter comes before the court on defendants' Motion for Stay Pending Appeal [Doc. 3203]. For the reasons set forth below, the motion is granted in part and denied in part.

I. Background/Procedural History

The parties are familiar with the factual and procedural history of this matter and therefore the court includes only the facts relevant to the instant motion.

The State of Oklahoma brought this case against defendants alleging that defendants have polluted and continue to pollute the waters of the Illinois River Watershed (IRW) with phosphorus and bacteria from the waste generated from defendants' poultry and applied to lands in the IRW. The parties tried the case to the court for fifty-two days over the course of five months.

The court subsequently issued its Findings of Fact and Conclusions of Law, finding in favor of the State of Oklahoma and against defendants on the State's claims of statutory public nuisance, federal common law nuisance, trespass, and violations of Okla. Stat. tit. 27A, § 2-6-105 and Okla. Stat. tit. 2, § 2-18.1. It further found and concluded that "actual and ongoing injury to the waters of the IRW constitutes irreparable harm and warrants injunctive relief." [Doc. 2979 at p. 217]; *see also* [*Id*. at pp. 207, 212-13].

Further, following a subsequent six-day evidentiary hearing, the court found and concluded that "conditions of the IRW have not materially changed since trial," and that phosphorus run-off from land-applied poultry waste continued to be a significant source of phosphorus, causing actual and ongoing injuries to the waters of the IRW. [Doc. 3161, pp. 6-7, 20-22].

On December 19, 2025, the court entered the Judgment. [Doc. 3192]. The Judgment includes three primary forms of relief: (1) remediation, (2) restriction on land application of poultry waste, and (3) penalties.

With respect to remediation, the Judgment contemplates a phased approach that includes remedial investigation, planning, implementation, and monitoring, all funded by defendants and overseen by a court-appointed master. [*Id*. at pp. 9-20].

As to the restriction on land application of poultry waste, the Judgment prohibits, in the IRW, land application of poultry waste generated by defendants' birds on land having an STP of 120 lbs./acre or greater. [*Id.* at p. 20]. Nor shall land application of poultry waste be permitted in the IRW at any rate that would cause the land to exceed 120 lbs./acre STP. [*Id.* at p. 21]. To that end, defendants shall ensure that their contract growers have access to sufficient poultry waste removal equipment, storage facilities, transportation methods, and disposal methods for poultry waste generated by defendants' birds, and the defendants shall hold their Contract Growers harmless for the costs of removal, storage, transportation, and disposal of poultry waste generated by defendants' birds. [*Id.* at p. 22].

Finally, pursuant to Okla. Stat. tit. 27A, § 2-3-504, the Judgment imposes civil penalties against defendants Tyson Foods, Inc., Cobb-Vantress, Cargill, Inc., George's, Inc., Simmons, and Cal-Maine. [*Id.* at pp. 31-32].

Defendants now seek to stay the Judgment pending appeal. Alternatively, defendants ask the court to stay the injunctive portions of the Judgment pending the U.S. Court of Appeals for the Tenth Circuit's consideration of defendants' motion for stay pending appeal. [Doc. 3203; Doc. 3204; Doc. 3222].

II. Analysis

Defendants seek to stay pending appeal the monetary obligations of the Judgment without bond pursuant to Fed. R. Civ. P. 62(b), and to stay pending appeal the injunctive portions of the Judgment pursuant to Fed. R. Civ. P. 62(c).

A. Monetary Obligations

Pursuant to Federal Rule of Civil Procedure 62, execution on a money judgment is automatically stayed "for 30 days after its entry, unless the court orders otherwise." Fed. R. Civ. P. 62(a). Further, "[a]t any time after judgment is entered, a party may obtain a stay by providing a bond or other security." Fed. R. Civ. P. 62(b). District courts have "inherent discretionary authority" in setting supersedeas bonds. *Miami Int'l Realty Co. v. Paynter,* 807 F.2d 871, 873 (10th Cir. 1986). "This includes 'the discretion to reduce or waive the bond requirement if the appellant demonstrates a present financial ability to respond to the judgment that is likely to continue or if the appellant's present financial condition is such that posting a full bond would impose an undue financial burden.'" *Harris v. City Cycle Sales, Inc.*, No. 21-2264-EFM, 2023 WL 8622240, at *1 (D. Kan. Dec. 12, 2023).

The State does not object to a stay of the monetary portions of the Judgment without requiring defendants to post a bond. [Doc. 3203-1, p. 2; Doc. 3228, p. 5]. Further, there appears to be no dispute that defendants possess the present financial ability to respond to the Judgment. [Doc. 3203-1]. Under the circumstances, the court concludes that a stay pending appeal of the monetary portions of the Judgment, without bond, is warranted.

B. Injunctive Relief

As a general rule, "[u]nless the court orders otherwise," a "final judgment in an action for an injunction" is not stayed pending appeal. Fed. R. Civ. P. 62(c)(1). However, "[w]hile an appeal is pending . . . the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights." Fed. R. Civ. P. 62(d). To determine whether to grant a stay pending appeal, the court considers four factors: "(1) whether the stay applicant has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder,* 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill,* 481 U.S. 770, 776 (1987)). "The first two factors . . . are the most critical," and [t]he party requesting a stay bears the burden of showing that the circumstances justify an exercise of [the court's] discretion." *Nken*, 556 U.S. at 433-34.

1. Likelihood of Success on the Merits

As previously stated, "a strong showing" that defendants are likely to succeed on the merits is required. "It is not enough that the chance of success on the merits be 'better than negligible.'" *Nken*, 556 U.S. at 434 (quoting *Sofinet v. INS*, 188 F.3d 703, 707 (7th Cir. 1999)).

Defendants first argue that they are likely to succeed on the merits because "growers' compliance with state nutrient management plans is a complete defense to liability." [Doc. 3204, p. 15; *see also id.* at pp. 15-18]. However, the court previously considered and rejected defendants' arguments in this regard. Specifically, the court concluded that state nutrient management plans, or animal waste management plans, "are not sufficiently specific for the court to conclude, as a matter of law, that all of defendants' actions that created the nuisance were 'expressly authorized by law,'" particularly given Okla. Stat. tit. 2, § 10-9.7(B)(4)'s mandate that "[p]oultry waste handling, treatment, management and removal shall not . . . create an environmental or public health hazard" or result in the contamination of waters of the state. [Doc. 2979, p. 195]. The decision of the Oklahoma Court of Civil Appeals in *Vulcan Construction Materials, LLC v. City of Tishomingo*, 526 P.3d 1171, 1176 (Okla. Civ. App. 2022), on which defendants rely, is not to the contrary.

In *Vulcan,* the Oklahoma Court of Civil Appeals considered "a direct conflict between a state law and a local ordinance." *Id.* at 1174. In that case, state law limited the use of water by mining companies operating on or near the Arbuckle-Simpson aquifer to an amount referred to as the company's "equal proportionate share." *Id.* at 1173. However, the law regulated only a company's *use*, and permitted the mines "to withdraw more than their equal proportionate share so long as they replenish the aquifer as required." *Id.* at 1175. In 2015, the City of Tishomingo amended its ordinances to define "nuisance" to include the withdrawal of groundwater from the

Pennington Creek subsurface watershed, which emanates from the Arbuckle-Simpson aquifer, in excess of the "equal proportionate share." *Id.* at 1174. In considering whether state law preempted the City's ordinance, the court recognized that "[t]he mines were fully permitted and doing that which state law specifically allows" and concluded that "where there is a direct state statute on point, a municipality cannot make an end-run around that statute." *Id*. at 1175-76. Thus, the City ordinance was preempted. *Id.*

Here, as previously recognized by this court, although a state regulation establishes a maximum land application rate of 300 lbs./acre STP, it does not require land application at that rate. [Doc. 2979, p. 196]. Further, Oklahoma law requires that every poultry operation have a Nutrient Management Plan, which among other things, must ensure that "[s]torage and land application of poultry waste shall not cause a discharge or runoff of significant pollutants to waters of the State or cause a water quality violation to waters of the State." Okla. Admin. Code § 35:17-5-5(c); *see also* Okla. Stat. tit. 2, §§ 10-9.7(B)(1), (C); Okla. Stat. tit. 2, §§ 10-9.7(B)(4), (C) (superseded effective July 1, 2015). Further, nutrient management plans must be designed to ensure that poultry waste handling, treatment, management, and removal shall not "create an environmental or public health hazard" or "result in contamination of waters of the state." Okla. Stat. tit. 2, § 10-9.7(B)(4); Okla. Stat. tit. 2, §§ 10-9.7(B)(4), (C) (superseded effective July 1, 2015); *see also* [Doc. 2979, pp. 193-196]. Thus, state law prohibits excessive land application of poultry waste and compliance with nutrient management plans is no defense to liability.

Defendants next argue that they are likely to succeed on the merits as they "cannot be held vicariously liable for any legal violation committed by growers." [Doc. 3204, p. 18]. Again, the court has previously considered and rejected this argument. [Doc. 2979, p. 187-88]. Nevertheless, defendants contend the court erred because "Oklahoma law precludes holding a person liable in nuisance when he 'did not control the instrumentality alleged to constitute the nuisance at the time it occurred,'" and defendants "did not control growers' application or sale of poultry litter." [Doc. 3204, pp. 18-19 (citing *State ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719, 728 (Okla. 2021); *Phillips Petroleum Co. v. Stephenson,* 129 P.2d 575 (Okla. 1942))].

Defendants apply *Hunter* and *Phillips Petroleum* too broadly. In *Phillips,* Harry Pingry owned certain real property in the Town of Ralston and contracted with Phillips Petroleum Company to operate a filling station thereon. *Phillips*, 129 P.2d at 575. However, in October of 1938, Phillips abandoned the filling station. *Id.* Pursuant to the contract between the parties, Pingry removed the underground fuel tanks and returned them to Phillips. *Id.* Removal of the tanks resulted in a hole, which Pingry filled. *Id.* at 576. Five months later, Roxie Stephenson was injured when she fell, allegedly as a result of the hole created by removal of the tanks being inadequately filled. *Id.* at 575. Limiting its holding to those facts, the court concluded that Phillips "was not maintaining the alleged nuisance" and therefore "there existed no duty on its part to protect the plaintiff under the circumstances." *Id.* at 576.

Turning to *Hunter,* in that decision, the Oklahoma Supreme Court primarily held that Oklahoma public nuisance law does not extend to traditional products liability claims against product manufacturers. *Hunter,* 499 P.3d at 725-31. In doing so, the Court recognized the unremarkable proposition that "[a] manufacturer does not have control of its product once it is sold." *Id*. at 727. The court reasoned:

> The State asks this Court to broadly extend the application of the nuisance statute, namely to a situation where a manufacturer sold a product (for over 20 years) that was later alleged to constitute a nuisance. A product manufacturer's responsibility is to put a lawful, non-defective product into the market. There is no common law tort duty to monitor how a consumer uses or misuses a product after it is sold. Without control, a manufacturer also cannot remove or abate the nuisance—which is the remedy the State seeks from [defendant] in this case.

Hunter, 499 P.3d at 728 (internal footnote and citation omitted).

Phillips and *Hunter* stand for the simple principle that liability cannot be imposed absent an ongoing duty or conduct directed toward the nuisance. *See Phillips*, 129 P.2d at 576; *Hunter,* 499 P.3d at 728. Further, the Oklahoma Supreme Court's statements in *Phillips* and *Hunter* were bound to the facts of those cases. *See Phillips*, 129 P.2d at 576 (emphasis added) ("*Under all the foregoing facts* we hold that the [defendant] was not maintaining the alleged nuisance . . . and there existed no duty on its part to protect the plaintiff *under the circumstances*."); *Hunter*, 499 P.3d at 723 (considering whether nuisance extends to manufacturing, marketing, and selling products). Unlike in *Hunter*, defendants were not manufacturing a product and therefore the decision is inapplicable.[1] *Hunter,* 499 F.3d at 725-31. Nor did defendants cease operations in the IRW and terminate their relationships with the growers prior to the creation of the alleged nuisance as in *Phillips*. Rather, defendants maintained and, in some instances, continue to maintain poultry operations in the IRW through a vertically-integrated business model. [Doc. 2979, pp. 87-94; Doc. 3161, pp. 9-11, 15-16]. The structure of the model and resulting relationship "significantly limits the growers' independence," as defendants, not the growers, own the birds, supply the feed consumed by the birds, decide when and where the birds will be placed and picked up, and specify or make recommendations regarding clean-outs and cake-outs of houses. [Doc. 2979, pp. 89-93]. "By virtue of their contracts and the vertically integrated structure of the business, each defendant

[1] In fact, in *Hunter*, the Oklahoma Supreme Court recognized that public nuisance "has historically been linked to the use of land by the one creating the nuisance" and therefore Oklahoma law "has limited . . . public nuisance liability to defendants (1) committing crimes constituting a nuisance, or (2) causing physical injury to property or participating in an offensive activity that rendered the property uninhabitable." *Hunter,* 499 F.3d at 724. Here, defendants are liable for precisely that—participating in poultry operations in the IRW in a manner that has damaged the waters thereof.

maintains control over virtually all essential aspects of poultry production, including the activities of their contract growers." [*Id.* at p. 94].

Based on defendants' then-ongoing control of poultry production, *Phillips* and *Hunter* are factually distinguishable. Nor have defendants demonstrated that they were under no duty to protect against a nuisance under the circumstances. Thus, *Phillips* and *Hunter*'s limited holdings do not suggest that defendants are likely to succeed on the merits.

Defendants argue that any control element is incompatible with the RESTATEMENT (SECOND) OF TORTS § 427B, on which the court relied in its Findings of Fact and Conclusions of Law [Doc. 2979]. However, as discussed above, the court reads *Phillips* and *Hunter* to require an existing duty or conduct with respect to the nuisance, rather than "control" in the traditional sense, to warrant liability. Section 427B's recognition that "[o]ne who employs an independent contractor to do work which the employer knows or has reason to know to be likely to involve . . . the creation of a public or a private nuisance, is subject to liability for harm resulting to others from such . . . nuisance" is consistent with such an existing duty or relationship. RESTATEMENT (SECOND) OF TORTS § 427B. Further, the court notes that the RESTATEMENT is consistent with long-standing Oklahoma precedent. *See Tankersley v. Webster*, 243 P.745, 747 (Okla. 1925). Moreover, the Oklahoma Supreme Court has previously adopted RESTATEMENT principles into its nuisance law. S*ee Nichols v. Mid-Continent Pipe Line Co*., 933 P.2d 272, 277 (Okla. 1996). Thus, as recognized in the court's Findings of Fact and Conclusions of Law, an Oklahoma court would likely apply RESTATEMENT (SECOND) OF TORTS § 427B and defendants are unlikely to succeed on the merits with respect to this issue.[2]

Finally, defendants offer a litany of reasons as to why the injunction is independently likely to be reversed, none of which are persuasive.

First, the defendants' federalism concerns are baseless as the Judgment does not "displace" Oklahoma's regulatory scheme. Rather, the Judgment "is consistent with the regulatory scheme that third-party stakeholders are required to follow," and serves to protect Oklahoma waters as required by Oklahoma law. [Doc. 3192, pp. 6-7]. Further, as previously recognized by this court, defendants can be liable for their conduct in Arkansas, and "Arkansas cannot 'permit' nonpoint source pollution of Oklahoma's waters." [Doc. 2979, pp. 200, 218].

Further, the Judgment does not require that the master or watershed management team members trespass on private property owned by nonparties. As recognized by the State, the Judgment permits inspection and testing "under the supervision of the master or the WMT" where an individual chooses to land apply poultry waste. [Doc. 3192, p. 21]. Nor does the Judgment require defendants to engage in "theft" or "to do things they have no legal right to do." [Doc. 3204, p. 24]. Rather, the Judgment simply requires that defendants bear the costs, and hold the growers harmless, for the removal, storage, transportation, and disposal of poultry waste and, if the grower refuses to comply with the master, terminate or refuse to renew its contract with that grower. [Doc. 3192, pp. 21-22].

[2] The court rejects defendants' contention that defendants cannot be held liable because they did not know that their chicken-growing services were likely to cause a nuisance. The court previously found that "the defendants knew their growers, in the ordinary course of their work for defendants, spread poultry litter on the land in the IRW, and knew or should have known no later than the late 1990s that their growers' land application of litter was a primary source of the excess phosphorus in the waters of the IRW." [Doc. 2979, p. 188].

As to defendants' assertion that "the injunction will inflict serious harm on third parties," including poultry farmer and growers, cattlemen and hay farmers, litter brokers and haulers, [Doc. 3204, p. 24], the court acknowledges the concerns of these third parties, and recognizes their contributions to Oklahoma's economy, society, and culture. However, the court considered their interest in crafting the Judgment and, as stated therein, the Judgment sufficiently balances the interests of the defendants and those third parties with the interest of the public in enforcement of laws protective of the environment. [Doc. 3192, pp. 5-6].

Defendants next contend that the court issued the injunction without holding the State to its burden of proof. This is not so. Rather, the court has, on multiple occasions, concluded that the State had satisfied its burden and appointed a master to oversee compliance with the specific remedies ordered, all of which is entirely permissible under Federal Rule of Civil Procedure 53. Fed. R. Civ. P. 53(a)(1)(C), (c).

Finally, the record was sufficient and defendants' arguments to the contrary are unavailing. *See* [Doc. 2989, pp. 31-36, 184-85].

For the forgoing reasons, defendants have not made the requisite "strong showing" that they are likely to succeed on the merits. *See Nken,* 556 U.S. at 434. Thus, this first factor weighs against imposition of a stay pending appeal.

2. <u>Irreparable Injury to Defendants</u>

The court must next consider whether defendants have demonstrated that they will be "irreparably injured absent a stay." *Nken,* 556 U.S. at 434. "[S]imply showing some 'possibility of irreparable injury'" is insufficient. *Id.* (quoting *Abbassi v. INS*, 143 F.3d 513, 514 (9th Cir. 1998)); *see also Schrier v. Univ. of Colo*., 427 F.3d 1253, 1267 (10th Cir. 2005) ("[S]peculative harm does not amount to irreparable injury.").

Defendants first argue that, absent a stay, the companies with continuing operations in the IRW will be "force[d] . . . to spend millions in unrecoverable compliance costs." [Doc. 3204, p. 25]. "Economic loss 'usually does not, in and of itself, constitute irreparable harm.'" *Port City Props. v. Union Pac. R.R. Co.*, 518 F.3d 1186, 1190 (10th Cir. 2008) (quoting *Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1189 (10th Cir. 2003)). However, the Tenth Circuit has recognized that financial loss "that cannot later be recovered for reasons such as sovereign immunity constitutes irreparable injury." *Chamber of Com. of the United States of America v. Edmondson*, 594 F.3d 742, 770-71 (10th Cir. 2010); *see also Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1157 (10th Cir. 2011) (collecting cases).

Defendants present evidence that, to ensure that poultry waste is not land applied in the IRW at a rate that would cause the land to exceed 120 lbs./acre as required by the Judgment, they will incur additional costs and expenses to transport or dispose of the litter. *See* [Doc. 3204-1, p. 5; Doc. 3204-2, pp. 3-4; Doc. 3204-6, pp. 2-5]. Simmons estimates that such costs may exceed one million dollars, [Doc. 3204-2, p. 4], but provides no explanation or factual basis for the estimate. Regardless of the amount incurred, however, it is likely that sovereign immunity would preclude recovery of such costs against the State if the Judgment is overturned and therefore any such expenses constitute irreparable harm. *Chamber of Commerce of the United States of America*, 594 F.3d at 771.

Defendants also contend that "[c]omplying with the judgment will also cause unrecoverable losses of reputation, goodwill, profits, and market share to the defendants with continued operations in the IRW." [Doc. 3204, pp. 26-28]. Defendants' alleged loss reputation, goodwill, and market share is speculative and therefore does not amount to irreparable injury. *See Schrier,* 427 F.3d at 1267. The court entered its Findings of Fact and Conclusions of Law nearly two years ago concluding that defendants had polluted the waters of the IRW. [Doc. 2979]. Yet, defendants offer no evidence of any actual, concrete loss of reputation or goodwill. Nor have defendants offered any evidence of lost profits in the interim. Further, although defendants express concern that they will lose relationships with third-party growers, defendants provide no evidence beyond their own expressions of concern. Accordingly, defendants have failed to show irreparable harm in the form of lost reputation, goodwill, profits, and market share.

Based on the foregoing, the court concludes that defendants will suffer some irreparable harm if the Judgment is overturned absent a stay. However, the extent of the harm to defendants has not been adequately quantified. While the court agrees that defendants will incur expenses associated with complying with the poultry waste restriction portion of the Judgment, defendants' assertion that the costs will be "in the millions" is unsubstantiated and speculative.[3] Accordingly, the factor weighs only slightly in favor of a stay.

3. <u>Substantial Injury to the State</u>

The court next considers whether the issuance of a stay will substantially injure the State. *Nken,* 556 U.S. at 434. This court has repeatedly found that phosphorus from land-applied poultry waste continues to be a significant source of phosphorus, causing injuries to the waters of the IRW.

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[3] Further, insofar as defendants contend that that the Judgment will require "rapid restructuring," [Doc. 3204-1,p. 3], and that costs for removing, hauling, and applying litter were not included in their cost structures, [Doc. 3204-2, p. 4], the assertions are belied by the record. During the December 2024 evidentiary hearing, Tim Alsup, Agriculture Manager for Cargill Turkey, testified that poultry companies, including Cargill, set up a company to "facilitate and develop markets to export litter out of the Illinois River Watershed." [Doc. 3138, p. 8]. Further, defendants presented evidence that from 2014 to 2023 in Benton and Washington Counties, Arkansas, the percentage of litter applied was trending downward, and litter being transferred out was trending upward. [Doc. 3145, p. 127; Doc. 3135, p. 9; DJX2-0212B]. The trends were driven, in part, by the demand for litter. [Doc. 3145, p. 128]. Patrick Fisk, Director of the Livestock and Poultry Division for the Arkansas Department of Agriculture, testified that the trends in Arkansas reflect trends throughout the IRW and that he expects those trends to continue. [Doc. 3135, p. 10].

[Doc. 2979, pp. 169-70, 182-83, 200-04, 217-18; Doc. 3161, pp. 20-22]. In fact, the court has characterized poultry waste as the "principal contributor of the phosphorus causing injuries to the waters of the IRW." [Doc. 2979, p. 183]. Water is a "valuable" resource to be protected in Oklahoma, Okla. Admin. Code § 252:730-3-1(a), and injury to Oklahoma waters amounts to irreparable harm. [Doc. 2979, pp. 217-18; Doc. 3161, pp. 21-22]. The continuing and irreparable injury to the waters of the IRW as a result of land-applied poultry waste constitutes a substantial injury to the State and therefore this third factors weighs against issuance of a stay.[4] *Amoco Prod. Co. v. Vill. of Gambell,* 480 U.S. 531, 545 (1987) ("Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable.").

4. Public Interest

Finally, the court considers whether a stay is in the public interest. As an initial matter, the third and fourth factors—harm to the opposing party and public interest—"merge when the Government is the opposing party," as here. *Nken*, 556 U.S. at 435; *see also Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 112 (10th Cir. 2024). Accordingly, for the same reasons discussed above, the public interest factor weighs against imposition of a stay.

Further, even when independently considered, the public interest weighs against a stay. As previously stated, it is the policy of Oklahoma that "[w]aters of the state constitute a valuable resource and shall be protected, maintained, and improved for the benefit of all the citizens." Okla.

[4] The court disagrees with defendants' assertion that there exists no "urgency in taking measures to remediate the IRW." [Doc. 3204, p. 28]. This court previously found that "[e]levated STP levels increase the amount of dissolved phosphorus in runoff" and that "[e]levated STPs decline slowly." [Doc. 2979, pp. 34, 104]. Permitting defendants' growers to land apply poultry waste in a manner that increases the STP above 120 lbs./acre will result in increased dissolved phosphorus runoff for an extended period of time and, therefore, increased pollution.

Admin. Code § 252:730-3-1(a); *see also* Okla. Stat. tit. 27A, §§ 2-6-102, 2-6-105. The Judgment will prevent the continued pollution of the waters of the IRW to the public's benefit. *See* [Doc. 2979, pp. 50-78 (recognizing degradation of use and aesthetics as a result of ongoing phosphorus pollution)]. The court acknowledges and understands the concerns of ranchers who apply poultry litter to their pastures and businesses which clean litter out of poultry houses and spread poultry litter in the IRW. However, defendants have not demonstrated that these concerns outweigh the interest of the general public in preventing further pollution of the valuable waters of the IRW. For all of these reasons, the fourth factor, the public interest, weighs against a stay.

5. Balancing the Factors

Based on the foregoing, only the second factor—irreparable harm—weighs in favor of a stay and then only slightly. In contrast, the remaining three factors—likelihood of success, substantial injury to the State, and the public interest—weigh heavily against a stay. Thus, the court declines to stay the injunctive portions of the Judgment.

For the same reasons, defendants' alternative request that the court stay the injunctive portions of the Judgment pending the U.S. Court of Appeals for the Tenth Circuit's consideration of defendants' motion for stay pending appeal.

III. Conclusion

WHEREFORE, defendants' Motion for Stay Pending Appeal [Doc. 3203] is granted in part and denied in part. The motion is granted insofar as it seeks to stay the monetary portions of the Judgment. The motion is otherwise denied.

IT IS SO ORDERED this 16th day of January, 2026.

GREGORY K. FRIZZELL
UNITED STATES DISTRICT JUDGE

be "App. at ___." The documents required by 10th Cir. R. 28.2(A) need not be attached to the uncited briefs.

On November 6, 2026, the parties shall electronically file a joint appendix that complies with 10th Cir. R. 30. On November 13, 2026, the parties shall electronically file final versions of all briefs containing citations to the appropriate joint appendix page numbers and the attachments required by 10th Cir. R. 28.2(A). No substantive changes may be made from the uncited preliminary briefs. The final briefs shall be designated "Final Brief."

Paper copies of the briefs and joint appendix need not be submitted unless ordered by the court at a later date.

Because the court is adopting the specific briefing schedule proposed by the parties, further modification to the briefing schedule is disfavored.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

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

STATE OF OKLAHOMA *ex rel.* GENTNER DRUMMOND, in his capacity as Attorney General of the State of Oklahoma and OKLAHOMA SECRETARY OF ENERGY AND ENVIRONMENT JEFF STARLING in his capacity as the TRUSTEE FOR NATURAL RESOURCES FOR THE STATE OF OKLAHOMA, Plaintiffs, v. TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC., COBB-VANTRESS, INC., CAL-MAINE FOODS, INC., CARGILL, INC., CARGILL TURKEY PRODUCTION, LLC, GEORGE'S, INC., GEORGE'S FARMS, INC., PETERSON FARMS, INC., and SIMMONS FOODS, INC., Defendants.	)	Case No. 05-CV-00329-GKF-SH

ORDER

This matter comes before the court on the Joint Motion for Entry of Consent Judgment [Doc. 3229] of plaintiff State of Oklahoma and defendants George's, Inc. and George's Farms, Inc. (collectively, "George's"); the Joint Motion for Entry of Consent Judgment and Request for Indicative Ruling [Doc. 3268] of the State and defendants Tyson Foods, Inc.; Tyson Poultry, Inc.; Tyson Chicken, Inc.; and Cobb-Vantress, Inc. (collectively, "Tyson"); the Joint Motion for Entry of Consent Judgment and Request for Indicative Ruling [Doc. 3269] of the State and defendants Cargill Incorporated and Cargill Turkey Production, LLC (collectively, "Cargill"); and the Joint

Motion for Entry of Consent Judgment and Request for Indicative Ruling [Doc. 3279] of the State and defendant Peterson Farms, Inc. ("Peterson"). For the reasons set forth herein, the motions are denied.

Background/Procedural History

On January 18, 2023, the court entered Findings of Fact and Conclusions of Law [Doc. 2979], finding in favor of the State and against defendants on the State's claims of statutory public nuisance, federal common law nuisance, trespass, and violations of Okla. Stat. tit. 27A, § 2-6-105 and Okla. Stat. tit. 2, § 2-18.1. The court directed the parties "to meet and attempt to reach an agreement with regard to remedies to be imposed in this action." The court advised that "[t]he agreed remedies, if any, must be approved by the court," and "[i]n the event the parties [we]re unable to reach an accord, the court shall enter judgment." [*Id.* at p. 218].

On September 13 and 14, 2023, the parties engaged in mediation sessions with retired Tenth Circuit Judge Deanell Reece Tacha. The parties subsequently engaged in an all-day, in-person mediation session with Judge Tacha on October 12, 2023, but were unable to reach an agreed-upon resolution. [Doc. 3008; Doc. 3009].

On October 26, 2023, defendants filed a motion seeking dismissal of this case based on defendants' contentions that plaintiffs' claims for injunctive relief were moot and that proceeding on the record, at that time, would violate their due-process rights. The court denied the motion and set this matter for evidentiary hearing. [Doc. 3023; Doc. 3038].

The court held an evidentiary hearing on December 3, 2024 to December 6, 2024 and December 16 and December 17, 2024, to address "the contention made by the defendants, upon which the plaintiff has the burden of proof, that the conditions in the [Illinois River Watershed] materially changed following the end of trial." [Doc. 3137; Doc. 3098, p. 4].

In an Opinion and Order of June 17, 2025, the concluded that the State had satisfied its burden to show that conditions had not materially changed in the IRW following trial. [Doc. 3161]. The court therefore directed briefing as to a proposed final judgment.

On December 19, 2025, the court entered the Judgment, which includes a thirty-year term and three primary forms of relief: (1) remediation, (2) restriction on land application of poultry waste, and (3) civil penalties. [Doc. 3192].

With respect to remediation, the Judgment contemplates a phased approach that includes remedial investigation, planning, implementation, and monitoring, overseen by a court-appointed special master. [*Id*. at pp. 9-20]. Costs and expenses of the special master shall be paid by defendants through monies deposited into an Evergreen Fund, beginning with an initial deposit of $10,000,000. [*Id*. at p. 19]. If at, any time, the balance of the Evergreen Fund falls below $5,000,000, defendants shall replenish the account with an additional payment of $5,000,000. [*Id.*].

As to the restriction on land application of poultry waste in the IRW, the Judgment limits the land application of poultry waste to a level that provides the true agronomic need for plants in order to reduce the phosphorus run-off that pollutes the waters of the IRW. Based upon Specifically, the Judgment provides that the poultry waste generated by the defendants' birds shall not be applied on land having a Soil Test Phosphorus (STP) measure of 120 lbs./acre or greater. [*Id.* at p. 20]. Nor shall land application of poultry waste be permitted at any rate that would cause the land to exceed 120 lbs./acre STP. [*Id.* at p. 21]. To that end, the Judgment requires that defendants' contract growers have access to sufficient poultry waste removal equipment, storage facilities, transportation methods, and disposal methods for poultry waste generated by defendants' birds, and the defendants shall hold their Contract Growers harmless for the costs of removal, storage, transportation, and disposal of poultry waste generated by defendants' birds. [*Id.* at p. 22]. Pursuant to Judgment, the court shall appoint a special master who shall be charged with overseeing remediation of the IRW and the restrictions on land application of poultry waste. [*Id.* at p. 11].

Finally, pursuant to Okla. Stat. tit. 27A, § 2-3-504, the Judgment imposes civil penalties against defendants Tyson Foods, Inc., Cobb-Vantress, Cargill, Inc., George's, Inc., Simmons, and Cal-Maine. [*Id.* at pp. 31-32].

Defendants appealed. Thereafter, defendants filed a motion to stay the Judgment during the pendency of the appeal.

In an Opinion and Order of January 16, 2026, the court stayed the monetary portions of the Judgment, but declined to stay the injunctive portions.

On January 14, 2026, the State and George's filed the Joint Motion for Entry of Consent Judgment. [Doc. 3229]. The court set the motion for hearing on February 2, 2026, but, at the request of the parties, continued the hearing to February 27, 2026. [Doc. 3263].

On February 5, 2026, the court directed that, on or before February 19, 2026, the State and George's submit supplemental briefing directed to Federal Rule of Civil Procedure 60(b), as well as *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18 (1994). [Doc. 3265].

On February 12, 2026, the State and Tyson filed their Joint Motion for Entry of Consent Judgment and Request for Indicative Ruling. [Doc. 3268]. That same day, the State and Cargill filed their Joint Motion for Entry of Consent Judgment and Request for Indicative Ruling. [Doc. 3269]. The court set the motions for hearing on March 6, 2026. [Doc. 3278].

On February 19, 2026, the State and George's submitted the supplemental brief directed to Rule 60(b) and *Bancorp*. [Doc. 3273].

On February 24, 2026, the State and Peterson's filed the Joint Motion for Entry of Consent Judgment and Request for Indicative Ruling. [Doc. 3279]. The court set the motion for hearing with Cargill's and Tyson's respective motions. [Doc. 3281].

On February 27, 2026, the court held a hearing on the State's and George's joint motion. [Doc. 3286; Doc. 3287].

On March 4, 2026, with leave of court, the State, Tyson, Cargill, and Peterson filed a Joint Supplemental Brief Supporting Entry of the Consent Judgment. [Doc. 3292].

On March 6, 2026, the court held a hearing on the State's joint motions with Tyson, Cargill, and Peterson. [Doc. 3293; Doc. 3296].

Proposed Consent Judgments

Prior to considering the motions, it is first necessary to discuss the proposed consent judgments. Although they include some substantively different terms, the four proposed consent judgments adopt the same basic framework.

First, the settling defendants would make a one-time payment, in varying amounts, to a Monetary Relief Fund.[1] The monies shall be used "for purposes including, but not limited to, remediation or conservation projects in the IRW and for payment of attorney's fees and litigation costs in an amount to be determined either by order of the Court or by agreement between the State and its outside private lawyers." [Doc. 3229-1, p. 5; Doc. 3268-1, p. 5; Doc. 3269-1, p. 5; Doc. 3279-1, p. 5]. The parties state that the Attorney General will oversee the remediation or conservation projections. [Doc. 3296, p. 8].

[1] George's shall make a one-time payment in the amount of $5,000,000 [Doc 3229-1, p. 5]; Tyson shall make a one-time payment in the amount of $18,050,000 [Doc. 3268-1, p. 5]; Cargill shall make a one-time payment in the amount of $6,175,000 [Doc. 3269-1, p. 5]; and Peterson shall make a one-time payment in the amount of $950,000 [Doc. 3279-1, p. 5].

Second, the settling defendants would land-apply decreasing percentages of the total amount of poultry waste removed each year from poultry houses they or their contract growers own or operate. The land application restrictions are based on the weight of the litter removed from the poultry house, rather than soil test phosphorous (STP) levels. [Doc. 3229-1, pp. 6-8; Doc. 3268-1, pp. 6-8; Doc. 3269-1, pp. 6-8; Doc. 3279-1, pp. 6-8]; *see also* [Doc. 3287, pp. 10-11]. For example, with respect to the proposed consent judgments with George's and Tyson, the percentage of poultry waste to be land applied in the IRW from poultry houses they control would decrease from 40% in years 1 and 2 to 20% in years 5, 6 and 7. [Doc. 3229-1, p. 6; Doc. 3268-1, pp. 6-7; Doc. 3269-1, p. 6; Doc. 3279-1, pp. 6-7]. A special master would monitor the settling defendants' compliance with the land application restrictions. [Doc. 3229-1, pp. 9-12; Doc. 3268-1, pp. 9-13; Doc. 3269-1, pp. 9-14; Doc. 3279-1, pp. 9-14].

Third, with respect to the special master, each settling defendant would make a payment for deposit into an escrow account to be used to pay for the services and/or expenses of the special master in monitoring compliance with the litter application restrictions.[2] [Doc. 3229-1, p. 10; Doc. 3268-1, p. 11; Doc. 3269-1, p. 11; Doc. 3279-1, p. 11]. The account would be controlled by the Attorney General. [Doc. 3287, pp. 14-15].

Fourth, upon approval of the proposed consent judgments, the State shall "fully, finally, and forever release, relinquish and discharge" the settling defendants from

> any and all manner of claims, demands, actions, suits or causes of action . . . arising out of or relating in any way to the conduct alleged or that could have been alleged in the case as it concerns poultry litter in the Illinois River Watershed, any waterways, groundwater or waters of the State in the Illinois River Watershed and/or Lake Tenkiller (the "Released Claims").

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[2] George's would deposit $250,000 [Doc. 3229-1, p 10]; Tyson would deposit $950,000 [Doc. 3268-1, p. 11]; Cargill would deposit $325,000 [Doc. 3269-1, p. 11]; and Peterson would deposit $50,000 [Doc. 3279-1, p. 11]. The payments to the Monetary Relief Fund would total $30,175,000.

[Doc. 3229-1, p. 13; Doc. 3268-1 pp. 14-15; Doc. 3269-1, pp. 14-15; Doc. 3279-1, p. 15]. Additionally, the parties "agree the IRW Growers were never sued by the State in this lawsuit," but, "for the avoidance of doubt," the State would release "any person that is or was previously under contract with any Released Party for the production or care of poultry or eggs in the Illinois River Watershed" from any Released Claim. [Doc. 3229-1, p. 14; Doc. 3268-1, p. 15; Doc. 3269-1, p. 15; Doc. 3279-1, p. 16].

The proposed consent judgments as to George's and Tyson would be for seven-year terms. [Doc. 3229-1, p. 16; Doc. 3268-1, p. 17]. The proposed consent judgments as to Cargill and Peterson would be for ten-year terms. [Doc. 3269-1, p. 18; Doc. 3279-1, p. 18]. None of the proposed consent judgments include the imposition of civil penalties pursuant to Okla. Stat. tit. 27A, § 2-3-504. [Doc. 3296, p. 14], unlike the penalties imposed in this court's Judgment.

Given the structural similarities between the four proposed consent judgments, the court analyzes the four motions together.

Analysis

The movants agree that the proposed consent judgments would "supersede[] and replace[] the Judgment . . . entered by the Court on December 19, 2025" as to each settling defendant. [Doc. 3229-1, p. 3; Doc. 3268-1, p. 3; Doc. 3269-1, p. 3; Doc. 3279-1, p. 3]. Accordingly, the movants seek to set aside the Judgment and the court must examine Federal Rule of Civil Procedure 60(b).

Pursuant to Federal Rule of Civil Procedure 60(b),

> [o]n motion and just terms, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons:
>
> ***

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b)(5), (6). "A Rule 60(b) motion for relief from judgment is an extraordinary remedy and may be granted only in exceptional circumstances." *Jackson v. Los Lunas Cmty. Program,* 880 F.3d 1176, 1191-92 (10th Cir. 2018). "The determination on vacatur is an equitable one, but the presumption is in favor of retaining the judgment, which 'should stand unless a court concludes that the public interest would be served by a vacatur.'" *19 Solid Waste Dep't Mechs. v. City of Albuquerque*, 76 F.3d 1142, 1144 (10th Cir. 1996) (quoting *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 26 (1994)). The movants seek vacatur pursuant to Rule 60(b)(5) and 60(b)(6).[3] The court separately considers each subsection.

A. Federal Rule of Civil Procedure 60(b)(5)

Looking first to Rule 60(b)(5), the Rule "permits relief from a judgment or order if '[1] the judgment has been satisfied, released, or discharged; [2] it is based on an earlier judgment that has been reversed or vacated; *or* [3] applying it prospectively is no longer equitable.'" *Jackson,* 880 F.3d at 1192 (quoting Fed. R. Civ. P. 60(b)(5)). As recognized by the Tenth Circuit, "[u]se of the disjunctive 'or' demonstrates 'that each of the provision's three grounds for relief is independently sufficient.'" *Jackson,* 880 F.3d at 1192 (quoting *Horne v. Flores,* 557 U.S. 433, 454 (2009)).

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[3] In the supplemental briefs, the parties contend that "changed circumstances warrant ***modification*** of the December 19 Judgment." [Doc. 3273, p. 7]; *see also* [Doc. 3292, p. 6 ("The court should modify the judgment under Rule 60(b)(5).")]. However, the parties' requests cannot be fairly characterized as "modifications." BLACK'S LAW DICTIONARY defines "modify" as "[t]o make somewhat different; to make small changes to (something) by way of improvement, suitability, or effectiveness." *Modify,* BLACK'S LAW DICTIONARY (12th ed. 2024). The settling parties do not seek to make "small changes" to the Judgment. Rather, the settling parties seek to "supersede[] and replace[] the Judgment." [Doc. 3229-1, p. 3; Doc. 3268-1, p. 3; Doc. 3269-1, p. 3; Doc. 3279-1, p. 3].

The movants first assert that, by virtue of the settlement agreements as set forth in the proposed consent judgments, the Judgment has been released or discharged.[4] However, the proposed Consent Judgments are each "conditioned upon the approval of the Consent Judgment by the Court." [Doc. 3229-1, p. 13; Doc. 3268-1, p. 14; Doc. 3269-1, p. 14; Doc. 3279-1, p. 15]. Thus, the State has only contingently released the Judgment and *has not* released or discharged defendants from their obligations under the Judgment as required by the Rule. *See* [Doc. 3296, p. 5]. For these reasons, Rule 60(b)(5)'s provision for satisfaction, release, or discharge of the judgment is inapplicable.

The movants next argue that applying the Judgment prospectively is no longer equitable.[5] *See* Fed. R. Civ. P. 60(b)(5) ("[T]he court may relieve a party . . . from a final judgment [where] . . . applying it prospectively is no longer equitable.").

As an initial matter, the Rule provides relief only from "judgments that have prospective application or effect." *United States v. Melot,* 712 F. App'x 719, 720-21 (10th Cir. 2017) (unpublished).[6] The court's Judgment includes the imposition of civil penalties, which are not prospective. *Melot,* 712 F. App'x at 721 ("A money judgment, on the other hand, simply remedies a past wrong; it isn't executory and doesn't require the court to supervise any future changing

[4] Movants do not assert that the Judgment has been satisfied nor could they do so as the provision of the Rule requires the court "to focus on whether the movant has satisfied each obligation set forth in the [judgment]." *Jackson,* 880 F.3d at 1201. Defendants have not.

[5] The parties do not contend that Rule 60(b)(5)'s provision for vacatur where the judgment "is based on an earlier judgment that has been reversed or vacated" applies. *See* Fed. R. Civ. P. 60(b)(5).

[6] "Unpublished decisions are not precedential but may be cited for their persuasive value." 10th Cir. R. 32.1(A).

conditions."). Accordingly, vacatur of the civil penalties portion of the Judgment pursuant to this provision of Rule 60(b)(5) is impermissible.

However, the primary focus of the Judgment is prospective relief and therefore the court considers whether it is no longer equitable to apply the Judgment. Pursuant to this subprovision of Rule 60(b)(5), "a party can ask a court to modify or vacate a judgment or order if 'a significant change either in factual conditions or in law' renders continued enforcement 'detrimental to the public interest.'" *Horne v. Flores*, 557 U.S. 433, 447 (2009) (quoting *Rufo v. Inmates of Suffolk Cnty. Jail*, 502 U.S. 367, 384 (1992)). "The party seeking relief bears the burden of establishing that changed circumstances warrant relief, but once a party carries this burden, a court abuses its discretion 'when it refuses to modify an injunction . . . in light of such changes.'" *Horne,* 557 U.S. at 447 (quoting *Agostini v. Felton*, 521 U.S. 203, 215 (1997)).

The movants contend that the proposed consent judgments and the asserted "expanded substantive provisions" included therein constitute a significant change in factual conditions that warrant relief. *See* [Doc. 3292, pp. 6-7; Doc. 3273, pp. 10-11]. However, the parties cite no binding precedent for the proposition that a post-judgment settlement agreement constitutes a "significant change . . . in factual conditions" for purposes of Rule 60(b)(5). Rather, although not considering Rule 60(b)(5) specifically, the U.S. Supreme Court has concluded that "exceptional circumstances" to warrant vacatur "do not include the mere fact that the settlement agreement provides for vacatur." *U.S. Bancorp Mortg. Co.,* 513 U.S. at 29.[7] Under the circumstances, the court cannot conclude that defendants have shown a "significant change . . . in factual conditions" based upon the proposed settlements as reflected in the consent judgments.

[7] For the reasons discussed herein, the parties have not shown "exceptional" or "extraordinary" circumstances.

Nor have the movants demonstrated that continued enforcement of the Judgment would be "detrimental to the public interest." *Horne,* 557 U.S. at 447; *see also Jackson*, 880 F.3d at 1194. Although the court must adopt a "flexible approach to evaluating the equities," *Jackson*, 880 F.3d at 1201, "a critical question in th[e] Rule 60(b)(5) inquiry is whether the objective of the District Court's [judgment] . . . has been achieved." *Horne*, 557 U.S. at 450. That is

> where the basis of the Rule 60(b)(5) motion is that continued enforcement of the decree is no longer equitable, instead of inquiring narrowly whether the specific obligations of a [judgment] have been attained, the court must broadly inquire whether the party obligated by the [judgment] is at that time in compliance with federal law.

Jackson, 880 F.3d at 1202.

The court previously concluded that "defendants, by their conduct, have unreasonably interfered with the public's right to the use and enjoyment of the waters of the IRW in Oklahoma. The State's injuries from phosphorous concentrations in the rivers and streams of the IRW and Lake Tenkiller are significant." [Doc. 2979, p. 201]. As a result, the court held that "[d]efendants are liable to the State for statutory public nuisance and for federal common law nuisance with respect to their conduct in the Oklahoma portion of the IRW and their conduct in the Arkansas portion of the IRW." [*Id.*]. Further, less than a year ago, this court found that phosphorous run-off from land-applied poultry waste continues to be a significant source of phosphorous, causing actual and ongoing injury to the waters of the IRW, and that conditions have not materially changed in the IRW. [Doc. 3161, pp. 20-22]. Settling defendants have presented no evidence that run-off from land-applied poultry waste has ceased to be a source of phosphorous, causing injury to the IRW waters such that the objectives of the Judgment—abatement of the nuisance and compliance with federal law—have been achieved. In light of the ongoing nuisance, settling defendants are not "in compliance with federal law" and vacatur pursuant to Rule 60(b)(5) must be denied for this additional reason. *See Jackson,* 880 F.3d at 1202.

A comparison of the proposed consent judgments with the Judgment reveals the following:

- The proposed consent judgments do not limit the application of poultry waste to reduce phosphorus runoff into the waters of the IRW. The record makes clear that land application of poultry manure at rates in excess of agronomic need elevates the level of phosphorus in the soil and increases the concentration of phosphorus in the runoff. In order to limit the application of poultry waste to reduce phosphorus runoff, the current Judgment prohibits the application of poultry waste at any rate that would cause STP to exceed 120 lbs./acre. The proposed consent judgments simply do not prevent the application of poultry manure at rates exceeding agronomic need and would result in continuing phosphorus pollution.

- The proposed consent judgments are insufficient in duration. Based on testimony by Soil Scientist and Geomorphologist Gregory Scott that "following cessation of land application, it would take up to thirty years of hay production and removal to remove legacy phosphorous placed in the soil up to a STP of 300," this court concluded that a thirty-year period of oversight by a special master is warranted. Yet, the proposed consent judgments would expire in only ten years with respect to Cargill and Peterson and would expire in only seven years with respect to George's and Tyson. The parties cite no evidence suggesting that a seven (or ten) year term is sufficient to remediate phosphorus pollution in the waters of the IRW or ensure that no additional pollution occurs. Rather, during the February 27 hearing, the State conceded it did not believe that remediation could be achieved in the short term. [Doc. 3287, pp. 9-10].

- The proposed "Monetary Relief Fund" contained in the proposed consent judgments would fail to provide sufficient monies to remediate the phosphorus pollution caused by the settling defendants. Under the terms of the proposed consent judgments, the Monetary Relief Fund is "for purposes including, but not limited to, remediation or conservation projects in the IRW and for payment of attorney's fees and litigation costs in an amount to be determined either by order of the Court or by agreement between the State and its outside private lawyers." See, e.g., [Doc. 3229-1, p. 5]. The State advised the court at the February 27 hearing that, pursuant to the terms of the contract between the State and outside counsel, "no more than 50 percent" of the Monetary Relief Fund would be expended on attorney fees and costs. If half of the Monetary Relief Fund of $30,175,000 is paid to outside counsel, only $15,087,500 would remain "for purposes including, but not limited to, remediation" of the phosphorus pollution caused by the defendants' overapplication of poultry manure. In contrast, the court's Judgment contemplates a remedial investigation by a special master, followed by a remediation plan funded by defendants' payments into an evergreen fund and implemented by the special master over the next thirty years. The proposed Monetary Relief Fund simply does not constitute an adequate remedy to warrant vacatur of the Judgment. .

- Under the proposed consent judgments, the defendants would pay no penalties to the Oklahoma Department of Environmental Quality Revolving Fund for their violations of Oklahoma's Environmental Quality Code, in contrast to the penalties imposed by the court on pp. 23-33 of the Judgment.

- The proposed consent judgments do not assure that the amount of poultry waste applied to the lands of the IRW will decrease. At the hearing held March 6, the State conceded that, under the terms of the proposed consent judgments, if the amount of poultry waste produced by a settling defendant was to increase significantly, the amount of poultry waste applied to the land could actually increase despite the percentage restrictions contained in the proposed consent judgments. [Doc. 3296, pp. 9-10].

For all these reasons, the movants have not shown that applying the Judgment prospectively is no longer equitable. Accordingly, Federal Rule of Civil Procedure 60(b)(5) is inapplicable, and the parties' motions are denied insofar as vacatur is sought under subpart (b)(5).

B. Federal Rule of Civil Procedure 60(b)(6)

Movants also rely on Federal Rule of Civil Procedure 60(b)(6) pursuant to which a court may grant relief from a final judgment for "any other reason that justifies relief." Fed. R. Civ. P. 60(b)(6). The Tenth Circuit has described the provision "as a 'grand reservoir of equitable power to do justice in a particular case,'" but has cautioned that "a district court may grant a Rule 60(b)(6) motion, 'only in extraordinary circumstances and only when necessary to accomplish justice.'" *Kile v. United States*, 915 F.3d 682, 687 (10th Cir. 2019) (quoting *Cashner v. Freedom Stores, Inc.*, 98 F.3d 572, 579 (10th Cir. 1996)); *see also Johnson v. Spencer*, 950 F.3d 680, 700-01 (10th Cir. 2020) (internal citation omitted) (quoting *McGraw v. Barnhart*, 450 F.3d 493, 505 (10th Cir. 2006)) ("Although 'the rule should be liberally construed when substantial justice will thus be served,' 'relief under Rule 60(b)(6) is extraordinary and reserved for exceptional circumstances.'"). The court begins its analysis with *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18 (1994). *See In re Renfrow*, No. 22-CV-00381-SH, 2022 WL 17668704, at *4 (N.D. Okla. Dec. 14, 2022) ("With any request for vacatur after settlement, consideration must start with [*Bancorp*].").

In *Bancorp*, the Court held that "mootness by reason of settlement" generally "does not justify vacatur of a judgment under review." *U.S. Bancorp Mortg. Co.*, 513 U.S. at 29. Recognizing that "the determination is an equitable one," however, the Court acknowledged that "exceptional circumstances may conceivably counsel in favor of" vacatur. *Id*. But "the mere fact that the settlement agreement provides for vacatur" is insufficient. *Id.* The Court reasoned as follows:

> As always when federal courts contemplate equitable relief, our holding must also take account of the public interest. Judicial precedents are presumptively correct and valuable to the legal community as a whole. They are not merely the property of private litigants and should stand unless a court concludes that the public interest would be served by a vacatur. Congress has prescribed a primary route, by appeal as of right and certiorari, through which parties may seek relief from the legal consequences of judicial judgments. To allow a party who steps off the statutory path to employ the secondary remedy of vacatur as a refined form of collateral attack on the judgment would—quite apart from any considerations of fairness to the parties—disturb the orderly operation of the federal judicial system.

Id. at 26-27 (internal quotations and citations omitted). The Court further noted that permitting vacatur of judgments under appellate review as a matter of course "may *deter* settlement at an earlier stage," because "[*s*]*ome* litigants, at least, may think it worthwhile to roll the dice rather than settle in the district court . . . if, but only if, an unfavorable outcome can be washed away by a settlement-related vacatur." *Id.* at 27-28.

Bancorp considered vacatur of binding appellate decisions, not district court judgments, and does not preclude the requested relief. However, as recognized by another court in this district, "numerous courts have applied *Bancorp* outside its original context." *In re Renfrow,* 2022 WL 17668704, at *6; *see also Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1129 n.20 (10th Cir. 2010) ("[*Bancorp's*] rationale also governs the district court's decision whether to vacate its own judgment pursuant to Fed. R. Civ. P. 60(b).”). In fact, “[i]n the decades since *Bancorp*, its equitable considerations have been consistently applied by courts in the Tenth Circuit and beyond to conclude that, absent ‘exceptional circumstances,’ mootness of an appeal by reason of settlement generally does not justify vacatur of an underlying judgment.” *In re Renfrow*, 2022 WL 17668704, at *5. Further, the movants agree that *Bancorp* provides a general framework for the court’s analysis of the motions. [Doc. 3287, p. 26; Doc. 3296, pp. 19, 30]. Thus, the court turns to the considerations articulated in *Bancorp*.

The court acknowledges differences in this case and *Bancorp*. Significantly, unlike in *Bancorp*, both prevailing and losing parties request vacatur. *See Major League Baseball Props*., *Inc. v. Pac. Trading Cards, Inc*., 150 F.3d 149, 152 (2d Cir. 1998) (“Unlike *Bancorp*, therefore, the victor in the district court wanted a settlement as much as, or more than, the loser did.”).

Further, the parties in *Bancorp* had been granted certiorari with respect to a precedential appellate decision, whereas, in this matter, defendants’ appeals are in their early stages. Accordingly, vacatur at this juncture would avoid further litigation through appeal, at least with respect to the settling defendants.[8]

And yet, in other, more significant ways, this case implicates the concerns expressed by the U.S. Supreme Court in *Bancorp*.

In *Bancorp*, the Supreme Court acknowledged that, because vacatur is an equitable determination, a court must consider “the nature and character of the conditions which have caused the case to become moot.” *Rio Grande Silvery Minnow*, 601 F.3d at 1129 (quoting *U.S. Bancorp*

[8] Simmons and Cal-Maine have not reached settlement agreements with the State and, presumably, their appeals would continue. Accordingly, regardless of whether the court vacates its Judgment in favor of the proposed consent judgments, the State will incur costs and expenses associated with those appeals. Moreover, that Simmons and Cal-Maine have not settled creates significant administration and management issues, discussed herein.

Mortg. Co., 513 U.S. at 24). The Court observed "[t]he principal condition to which we have looked is whether the party seeking relief from the judgment below caused the mootness by voluntary action." *U.S. Bancorp Mortg. Co*., 513 U.S. at 24.

As recognized by the Supreme Court in *Bancorp*, "exceptional circumstances" to justify vacatur "do not include the mere fact that the settlement agreement provides for vacatur." *U.S. Bancorp Mortg. Co*., 513 U.S. at 29. Further, although the parties cite the public's interest in settlement, generally, the Court recognized that "while the availability of vacatur may facilitate settlement after the judgment under review has been rendered and certiorari granted (or appeal filed), it may *deter* settlement at an earlier stage." *U.S. Bancorp Mortg. Co*., 513 U.S. at 27-28. "*Some* litigants, at least, may think it worthwhile to roll the dice rather than settle in the district court . . . if, but only if, an unfavorable outcome can be washed away by a settlement-related vacatur." *U.S. Bancorp Mortg. Co*., 513 U.S. at 28; *see also Okla. Radio Assocs. v. Fed. Dep. Ins. Corp*., 3 F.3d 1436, 1444 (10th Cir. 1993) ("The furthering of settlement of controversies is important and desirable, but there are significant countervailing considerations which we must also weigh. A policy permitting litigants to use the settlement process as a means of obtaining the withdrawal of unfavorable precedents is fraught with the potential for abuse.").

The need for vacatur rests entirely upon the parties and therefore weighs against the requested relief. The court entered the Findings of Fact and Conclusions of Law over three years ago. At that time, the court directed the parties "to meet and attempt to reach an agreement with regard to remedies to be imposed in this action." [Doc. 2979, p. 218]. The parties conferred for months but were unable to independently reach a resolution. The parties next requested mediation before Judge Tacha, which the court so directed. Again, the parties were unable to reach a resolution. As late as November 5, 2025, the State indicated that the parties were engaged in "ongoing settlement negotiations." [Doc. 3184, p. 2]. Yet, no resolution was reached as to any party until after entry of the Judgment. Had the parties truly wished to reach a negotiated resolution of this matter *without regard to outcom*e, such agreement could have been reached at any time in the nearly three years between the court's Findings of Fact and Conclusions of Law and the Judgment. The parties' failure to do so suggests they "roll[ed] the dice" and now seek to erase the result of that gamble through vacatur. *See U.S. Bancorp Mortg. Co*., 513 U.S. at 27-28. Providing relief from the court's Judgment, under the circumstances, may suggest to other litigants in this district that they need not engage in good-faith settlement negotiations in the earlier stages of litigation because any disagreeable consequences can be eradicated through a post-judgment settlement.

Further, the court must take into account the public's interest. *See U.S. Bancorp Mortg. Co*., 513 U.S. at 26. As recognized by the Supreme Court in *Bancorp*, "Congress has prescribed a primary route, by appeal as of right and certiorari, through which parties may seek relief from the legal consequences of judicial judgments," *Id.* The parties began traveling that route, *see* [Doc. 3198 to 3200; Doc. 3202], but now seek to reverse course and "step[] off the statutory path."[9] *U.S. Bancorp Mortg. Co*., 513 U.S. at 26. However, the interest of the public is often best served through "orderly operation of the federal judicial system." *Id*. Defendants having filed Notices of Appeal, this court lacks jurisdiction over this matter. It is for the Tenth Circuit, not this court, to

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[9] It is of no consequence that the parties have made the settlements contingent upon vacatur and have not yet dismissed the respective appeals. As explained by the U.S. Court of Appeals for the Second Circuit: "The parties cannot change that result by sleight of the draftsman's hand—making the settlement contingent upon, rather than in contemplation of, vacatur. Unlike a motion made after settlement is complete, the appeal in this case is not yet moot. But it would become moot were we to grant the vacatur, once the remaining terms of the settlement agreement were complied with. The contingent nature of the settlement does not alter the equitable calculus. '[T]he losing part[ies are still] voluntarily forfeit[ing their] legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering [their] claim to the equitable remedy of vacatur.'" *ATSI Commc'ns, Inc. v. Shaar Fund, Ltd*., 547 F.3d 109, 113 (2d Cir. 2008) (quoting *U.S. Bancorp*, 513 U.S. at 25).

determine the Judgment's future and the parties "are not free to contract about [its] existence." *Okla. Radio Assocs.,* 3 F.3d at 1444 (quoting *In re Mem'l Hosp. of Iowa Cnty., Inc.*, 862 F.2d 1299, 1303 (7th Cir. 1998)).

Rather than focusing on the public's interest in the "orderly operation of the federal judicial system," the parties urge the court to consider the public's interest in the proposed consent judgments themselves. However, the proposed consent judgments "do[] not present . . . the kind of action that would furnish compelling reasons for vacatur." *Schell v. Oxy USA Inc.*, 814 F.3d 1107, 1123 (10th Cir. 2016). In addition to the reasons listed on pages 12 and 13 above, the following factors weigh against vacatur:

- The proposed structure is unworkable. Defendants Cal-Maine and Simmons have not reached settlement agreements with the State in this matter. Thus, the court's December 19 Judgment stands as to those defendants, regardless of the action taken by the court as the proposed consent judgments. As a result, Cal-Maine and Simmons are required to contribute to the Evergreen Fund established by the December 19 Judgment to finance remediation projects, overseen by the Special Master. In contrast, the settling defendants would contribute to the Special Monetary Fund, an account distinct from the Evergreen Fund, in order to finance attorney's fees and costs, as well as "remediation and conservation projects" chosen by the Attorney General, rather than the Special Master. The Special Master would have no authority with respect to remediation under the terms of the proposed consent judgments. The dueling judgments create a situation where insufficient funds are provided for the Special Master's enumerated duty to remediate, and insufficient details are provided as to any remediation or conservation projects to be overseen by the Attorney General. Further, Cal-Maine and Simmons must comply with this court's restriction of 120 lbs./acre STP for land application of poultry waste. However, the proposed consent judgments relieve the settling defendants of their obligations to comply with the STP restrictions in favor of Litter Removal Limitations. Accordingly, the Special Master would be tasked with monitoring Litter Removal Limitations as to some defendants, but Soil Test Phosphorous limits as to the nonsettling defendants.

- The proposed consent judgments would fail to adequately fund the duties of the special master contemplated by those agreements. Nor would the special master be adequately equipped to ensure the settling defendants' compliance with the Litter Removal Commitments, as the proposed consent judgments include no staffing or administrative provisions. The settling defendants would pay a total of only $1,325,000 to fund seven to ten years of the special master's responsibilities to monitor compliance with litter removal requirements over the million-acre watershed. Once those monies are depleted, it appears likely that Oklahoma taxpayers would be paying the special master's fees and expenses.

- During the hearings on the motions, the State conceded that up to fifty percent (50%) of the settling defendants' one-time payments into the Monetary Relief Fund could be expended on attorney's fees and costs, rather than remediation. [Doc. 3287, p. 7; Doc. 3296, pp. 5-6]. However, the fifty-percent limitation is not included in any of the proposed consent judgments and, as a result, the State could devote more of the funds to attorney's fees, rather than remediation or conservation. Further, payment of attorney's fees and costs to outside counsel would be controlled by agreements between the State and its outside private lawyers and not subject to judicial review. [Doc. 3287, pp. 6-7].

- The proposed consent judgments contain releases of nonparty contract growers that are or were previously under contract with the settling defendants. The proposed releases exceed the scope of this litigation and this court lacks the jurisdiction to include such releases in this case. If the State and the defendants wish to release any potential claims against the contract growers, they may do so in a separate agreement. Furthermore, the proposed release is unnecessary to protect current contract growers in light of paragraph 4(h) of the court's Judgment requiring the defendants to hold their contract growers harmless for the costs of removal, storage, transportation and disposal of poultry waste generated by the defendants' birds.

- Finally, although the court does not wish to discount the concerns of contract growers in the Illinois River Watershed, the asserted economic harm to the poultry industry and Oklahoma poultry farmers is too speculative to justify a finding of exceptional circumstances. *19 Solid Waste Dep't Mechs. v. City of Albuquerque*, 76 F.3d 1142, 1145 (10th Cir. 1996); *Amoco Oil Co. v. U.S. Env'tl Prot. Agency*, 231 F.3d 694, 700 (10th Cir. 2000).

For all these reasons, the movants have not demonstrated "extraordinary circumstances" that justify relief from the Judgment under Rule 60(b)(6). Thus, the motions must be denied.[10]

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[10] Although this court lacks jurisdiction to grant the parties' requested relief, the court may properly consider and deny the motions. *West v. Ortiz*, No. 06-1192, 2007 WL 706924, at *5 n.5 (10th Cir. 2007) (unpublished); *Blinder, Robinson & Co. v. U.S. Secs. & Exch. Comm'n,* 748 F.2d 1415, 1420 (10th Cir. 1984) ("In ordinary civil cases the rule is that after an appeal has been taken the district court retains jurisdiction to consider and deny a Rule 60(b) motion."); *see also* Fed. R. Civ. P. 62.1(a)(2) ("If a timely motion is made for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the court may . . . deny the motion."); Fed. R. Civ. P. 62.1 advisory committee's note to 2009 adoption ("After an appeal has been docketed and while it remains pending, the district court cannot grant a Rule 60(b) motion without a remand. But it can entertain the motion and deny it, defer consideration, or state that it would grant the motion if the court of appeals remands for that purpose or state that the motion raises a substantial issue.").

Conclusion

WHEREFORE, the Joint Motion for Entry of Consent Judgment [Doc. 3229] of plaintiff State of Oklahoma and defendants George's, Inc. and George's Farms, Inc.; the Joint Motion for Entry of Consent Judgment and Request for Indicative Ruling [Doc. 3268] of the State and defendants Tyson Foods, Inc.; Tyson Poultry, Inc.; Tyson Chicken, Inc.; and Cobb-Vantress, Inc.; the Joint Motion for Entry of Consent Judgment and Request for Indicative Ruling [Doc. 3269] of the State and defendants Cargill Incorporated and Cargill Turkey Production, LLC; and the Joint Motion for Entry of Consent Judgment and Request for Indicative Ruling [Doc. 3279] of the State and defendant Peterson Farms, Inc. are denied.

IT IS SO ORDERED this 8th day of April, 2026.

Gregory K. Frizzell

GREGORY K. FRIZZELL
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that on July 15, 2026, I electronically filed this document with the Clerk of the Court using the CM/ECF System, which will send notice to all registered CM/ECF users.

/s/ Garry M. Gaskins, II