

**Nos. 26-5000, 26-5001, 26-5002, 26-5003, 26-5004, 26-5005, 26-5010
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,

v.

TYSON FOODS, INC., ET AL.,

Defendants-Appellants.

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

**MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN
SUPPORT OF JOINT MOTION FOR A STAY PENDING APPEAL**

Gatlin C. Squires, OBA #34795
Garrett J. Reed, OBA #35205
McAfee & Taft A Professional Corporation
Eighth Floor, Two Leadership Square
211 North Robinson Avenue
Oklahoma City, OK 73102
Telephone: (405) 235-9621
Facsimile: (405) 235-0439
gatlin.squires@mcafeetaft.com
garrett.reed@mcafeetaft.com

***Counsel for Oklahoma Farm Bureau,
Oklahoma Cattlemen's Association,
Oklahoma Pork Council, Individual
Legislators, and Individual Growers***

February 16, 2026

Non-party movants, Oklahoma Farm Bureau, Oklahoma Cattlemen's Association, and Oklahoma Pork Council (collectively, the "**Interested Organizations**"), and Speaker of the Oklahoma House of Representatives, The Honorable Kyle Hilbert, President Pro Tempore of the Oklahoma Senate, The Honorable Lonnie Paxton, The Honorable Representative Josh West, The Honorable Representative Brad Boles, The Honorable Representative Kenton Patzkowsky, The Honorable Representative David Hardin, The Honorable Representative Jim Grego, The Honorable Representative Josh Cantrell, The Honorable Representative Dick Lowe, The Honorable Representative Rusty Cornwell, The Honorable Representative Jim Olsen, The Honorable Representative Tammy Townley, The Honorable Representative Brian Hill, The Honorable Representative Mike Kelley, The Honorable Representative Kevin West, The Honorable Representative Steve Bashore, The Honorable Representative John Pfeiffer, The Honorable Representative Chris Sneed, The Honorable Representative Tim Turner, The Honorable Senator Chuck Hall, The Honorable Senator Julie Daniels, The Honorable Senator Grant Green, The Honorable Senator Casey Murdock, The Honorable Senator Roland Pederson, The Honorable Senator Tom Woods, The Honorable Senator Bryan Logan, The Honorable Senator Warren Hamilton, The Honorable Senator Spencer Kern, The Honorable Senator Todd Gollihare, and The Honorable Senator Julie McIntosh (collectively the "**Individual State Legislators**"),

and Mike & Shandra Langley, Steve Butler, Sean Clark, Kyle & Megan Langley, Jason & LouAnn Hays, Anthony Simpson, and Roy & Jennifer Teague (collectively, the “**Individual Growers**” and, with the Interested Organizations and Individual State Legislators, the “**Movants**”) hereby move for leave to file a brief as *amici curiae* in support of Defendants’-Appellants’ request to stay enforcement of the District Court’s December 19, 2025, Judgment (the “**Judgment**”) and in support of their Joint Motion for a Stay Pending Appeal (the “**Joint Motion to Stay**”)¹ pursuant to Fed. R. App. P. 29(a) and 10th Cir. R. 29.² A copy of the proposed brief is submitted herewith as Exhibit A.

¹ Defendants’-Appellants’ Joint Motion for a Stay Pending Appeal was filed in each of Appellants’ respective appeals as: ECF 23 in No. 26-5000; ECF 25 in No. 26-5001; ECF 25 in No. 26-5002; ECF 20 in No. 26-5003; ECF 25 in No. 26-5004; and ECF 20 in No. 26-5005.

² The Federal Rules of Appellate Procedure and the Tenth Circuit Rules do not expressly permit or disallow the filing of an amicus brief in support of an appellate stay. And, to that end, the rules do not prescribe a time frame to seek such a request. *See generally* Fed. R. App. P. Rule 29(a)–(b) (detailing the “Time for Filing” of an amicus curiae brief “During Initial Consideration of a Case on the Merits” and “During Consideration of Whether to Grant Rehearing” but not addressing the time for filing such briefs in connection with an appellate stay); *see also* Fed. R. App. P. Rule 8 (detailing the rules surrounding appellate stay requests but not addressing amici submissions in connection therewith). Still, Movants understand that the Court has, on least one occasion, considered and allowed such a request. *See F.T.C. v. Mainstream Marketing Services, Inc.*, 345 F.3d 850 (2003). Movants believe that enforcement of the Judgment on non-party landowners and producers, some of whom are represented herein, warrants consideration of their request.

DISCLOSURE OF ALL PARTIES' POSITIONS

Pursuant to 10th Cir. R. 29.2, Counsel for Movants has conferred with counsel for the Plaintiffs-Appellees who object to this request.

Counsel for Movants has conferred with counsel for the Defendants-Appellants who consent to this request.

ARGUMENTS AND AUTHORITIES

When requesting leave of court to file an amicus brief, movants are required to show “the movant’s interest” and “the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” Fed. R. App. P. 29(a)(3)(A)-(B). The Movants address each of these elements in turn.

I. The Movants’ Interests.

The Judgment effectively creates a moratorium on the application of poultry litter in the Illinois River Watershed (the “**IRW**”) if the litter originated from Defendants’-Appellants’ birds until some unknown date in the future. It further creates two sets of rules applicable to landowners in the IRW—one that applies to litter produced from growers in contract with the Defendants-Appellants and another regime that applies to all other growers’ litter. The Judgment also purports to redirect ownership of the litter away from the growers, which many growers depend on as a revenue-generating asset for an additional source of income or as an alternative source of fertilizer for their

own use. Finally, the Judgment also grants broad powers to the District Court-appointed master and his team by authorizing the physical invasion of private property and performance of testing and potentially removal of soils from such property, despite failing to provide notice and an opportunity to be heard to such non-party property owners in violation of their procedural due process rights.

To that end, the Movants, like the Defendants-Appellants, have serious concerns about the enforceability of the Judgment. Staying enforcement of the Judgment until this Court can ultimately rule on the merits of this case will maintain the status quo, minimize irreparable harm to non-parties, prevent substantial disruption in individual growers' operations, and allow stakeholders to fully analyze the impact and how to navigate enforcement of the Judgment in the event the Court were to affirm it.

Because of these issues, the Movants share many common interests with respect to the enforcement of the Judgment and the outcome of the Joint Motion to Stay. For example, there is a shared belief that the Judgment's requirements will irreparably harm those persons who are either members of the Interested Organizations or constituents of the Individual Legislators, and those agricultural producers who have joined herein as the Individual Growers.

The Movants can be categorized into two groups: the Interested Organizations and the Individual Legislators, who collectively represent the

interests of third parties, and the Individual Growers who, themselves, consist of poultry growers, litter-applicators, farmers, ranchers, landowners, and small business owners.

The Interested Organizations' and the Individual Legislators' interest with respect to the Joint Motion to Stay is that they are representative bodies with members or constituents who will be directly impacted by immediate enforcement of the Judgment. Because it is impractical for every person who the Judgment will ultimately harm or have an adverse impact on to join in this request, the Interested Organizations and the Individual Legislators—who each represent a broad section of poultry growers, litter-applicators, farmers, ranchers, landowners, and small business owners—act as their voice.

The Individual Growers' interest with respect to the Joint Motion to Stay is that they will be the most directly impacted by immediate enforcement of the Judgment. Litter continues to accumulate on a daily basis. And, as they have in the past, the Individual Growers have intentions of either selling and/or applying the litter. But now, the Judgment purports to strip many of them of this income-producing asset and alternative to commercial fertilizer. Other growers, who either fall outside of the IRW or who already export their litter outside of the IRW, will likely see downward pressure on the price of their litter if the export market is flooded with litter that cannot be applied in the IRW. Immediate enforcement of the Judgment would cause the Individual

Growers to substantially alter the course of the business, take away their ability to generate additional income, and increase input costs for much needed fertilizer, all in an effort to comply with a judgment that, they contend, will likely be reversed by this Court.

II. The Reason Why Movants' Amici Brief is Desirable and Why the Matters Asserted are Relevant to the Disposition of the Case.

Movants' brief will assist the Court in understanding the perspectives of affected poultry growers, litter-applicators, farmers, ranchers, landowners, and small business owners, none of whom were parties to the underlying District Court action, but who stand to face the most direct impact of immediate enforcement of the Judgment. The amici brief will also detail how the Judgment not only affects those in the IRW, but also those outside of the IRW across Oklahoma. While the Defendants'-Appellants' and Movants' interests are aligned in staying enforcement of the Judgment, the two groups share similar, but also differing, reasons.

The Interested Organizations and Individual Legislators are well suited to address the collective impact on the public interests in Oklahoma, and the extent to which and the ways in which the Judgment conflicts with them. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (detailing the fourth factor in determining whether to grant a stay pending appeal is the public interest). The Interested Organizations' roles as the representatives of a sizable portion of

the agricultural industry in Oklahoma further bolster their unique position to address the public interest, and the interest of the food producing and food consuming public impacted by the Judgment. *See* Advisory Committee Note to the 1998 amendments to Fed. R. App. P., Rule 29(b) (“An amicus curiae brief which brings relevant matter to the attention of the Court that has not already been brought to its attention by the parties is of considerable help to the Court.”).

Finally, the matters raised in the amici brief are relevant to the Court’s ruling on the Joint Motion to Stay. When evaluating Defendants’-Appellants’ request, the Court must evaluate the claimed irreparable harm—irreparable harm that, as the Defendants-Appellants also recognize, will not only affect them but also the non-party poultry growers, litter-applicators, farmers, ranchers, landowners, and small business owners. The Amici Brief details just that. And, to support the Movants’ position, the Amici Brief includes declarations by the various Individual Growers describing the economic hardships their operations face from the inability to apply the litter from Defendants’-Appellants’ birds, in addition to the adverse consequences stemming from the District Court’s broad grant of authority to a master tasked with visiting the property of non-party private landowners.

CONCLUSION

For the reasons set forth above, the Movants respectfully request that the Court grant them leave to file a brief in this matter as *Amici Curiae* in support of the Joint Motion to Stay.

Respectfully submitted,

s/Gatlin C. Squires

Gatlin C. Squires, OBA #34795

Garrett J. Reed, OBA #35205

McAfee & Taft A Professional Corporation

Eighth Floor, Two Leadership Square

211 North Robinson Avenue

Oklahoma City, OK 73102

Telephone: (405) 235-9621

Facsimile: (405) 235-0439

gatlin.squires@mcafeetaft.com

garrett.reed@mcafeetaft.com

***Counsel for Oklahoma Farm Bureau,
Oklahoma Cattlemen's Association,
Oklahoma Pork Council, Individual
Legislators, and Individual Growers***

CERTIFICATE OF COMPLIANCE WITH F.R.A.P. 27

Pursuant to F.R.A.P. 27(d)(2)(A), I hereby certify that I am counsel for Amici in this case, that the foregoing Motion for Leave to File Brief of Amici Curiae complies with the type-volume limitation of such rule because it contains 1,658 words, excluding the parts of the brief exempted by F.R.A.P. 32(f), as counted automatically by the word-processing system used to prepare the brief.

I also hereby certify that this brief complies with the typeface requirements of F.R.A.P. 32(a)(5) and the type style requirements of F.R.A.P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2003 in 13 point Century Schoolbook font.

s/Gatlin C. Squires

CERTIFICATE OF SERVICE

This is to certify that on this 16th day of February, 2026, I electronically filed the foregoing using the Court's CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Gatlin C. Squires

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BRIEF OF *AMICI CURIAE*

**OKLAHOMA FARM BUREAU, OKLAHOMA CATTLEMEN'S
ASSOCIATION, OKLAHOMA PORK COUNCIL, SPEAKER OF THE
OKLAHOMA HOUSE OF REPRESENTATIVES, THE HONORABLE
KYLE HILBERT, PRESIDENT PRO TEMPORE OF THE OKLAHOMA
SENATE, THE HONORABLE LONNIE PAXTON, THE HONORABLE
REPRESENTATIVES, KENTON PATZOWKSY, JOSH WEST, BRAD
BOLES, DAVID HARDIN, JIM GREGO, JOSH CANTRELL, DICK
LOWE, RUSTY CORNWELL, JIM OLSEN, TAMMY TOWNLEY, BRIAN
HILL MIKE KELLEY, KEVIN WEST, STEVE BASHORE, JOHN
PFEIFFER, CHRIS SNEED, TIM TURNER, AND THE HONORABLE
SENATORS CHUCK HALL, JULIE DANIELS, GRANT GREEN,
CASEY MURDOCK, ROLAND PEDERSON, TOM WOODS, BRYAN
LOGAN, WARREN HAMILTON, SPENCER KERN, TODD
GOLLIHARE, AND JULIE MCINTOSH, AND MIKE & SHANDRA
LANGLEY, STEVE BUTLER, SEAN CLARK, KYLE & MEGAN
LANGLEY, JASON & LOUANN HAYS, ANTHONY SIMPSON, AND
ROY & JENNIFER TEAGUE REGARDING THE DEFENDANTS-
APPELLANTS' JOINT MOTION FOR A STAY PENDING APPEAL**

Gatlin C. Squires, OBA #34795
Garrett J. Reed, OBA #35205
McAfee & Taft A Professional Corporation
8th Floor, Two Leadership Square
211 North Robinson Avenue
Oklahoma City, OK 73102
Telephone: (405) 270-6096
Facsimile: (405) 270-7212
gatlin.squires@mcafeetaft.com
garrett.reed@mcafeetaft.com

***Counsel for Oklahoma Farm Bureau,
Oklahoma Cattlemen's Association,
Oklahoma Pork Council, Individual
Legislators, and Individual Growers***

CORPORATE DISCLOSURE STATEMENT

The Oklahoma Farm Bureau, Oklahoma Cattlemen's Association, and Oklahoma Pork Council (collectively, the "**Interested Organizations**") have no parent corporations and no publicly held corporation owns 10% or more (or any) of their stock.

Speaker of the Oklahoma House of Representatives, The Honorable Kyle Hilbert, President Pro Tempore of the Oklahoma Senate, The Honorable Lonnie Paxton, The Honorable Representative Josh West, The Honorable Representative Brad Boles, The Honorable Representative Kenton Patzkowsky, The Honorable Representative David Hardin, The Honorable Representative Jim Grego, The Honorable Representative Josh Cantrell, The Honorable Representative Dick Lowe, The Honorable Representative Rusty Cornwell, The Honorable Representative Jim Olsen, The Honorable Representative Tammy Townley, The Honorable Representative Brian Hill, The Honorable Representative Mike Kelley, The Honorable Representative Kevin West, The Honorable Representative Steve Bashore, The Honorable Representative John Pfeiffer, The Honorable Representative Chris Sneed, The Honorable Representative Tim Turner, The Honorable Senator Chuck Hall, The Honorable Senator Julie Daniels, The Honorable Senator Grant Green, The Honorable Senator Casey Murdock, The Honorable Senator Roland Pederson, The Honorable Senator Tom Woods, The Honorable Senator Bryan

Logan, The Honorable Senator Warren Hamilton, The Honorable Senator Spencer Kern, The Honorable Senator Todd Gollihare, and The Honorable Senator Julie McIntosh (collectively the “**Individual State Legislators**”), are individuals to whom Fed. R. App. P. Rule 26.1 and 10th Cir. R. 26.1 do not apply.

Mike & Shandra Langley, Steve Butler, Sean Clark, Kyle & Megan Langley, Jason & LouAnn Hays, Anthony Simpson, and Roy & Jennifer Teague (collectively, the “**Individual Growers**”), are individuals to whom Fed. R. App. P. Rule 26.1 and 10th Cir. R. 26.1 do not apply.

IDENTITY AND INTERESTS OF THE AMICI CURIAE

The Interested Organizations’ and the Individual Legislators’ interest with respect to the Motion to Stay is that they are representative bodies with members or constituents who will be directly impacted by immediate enforcement of the Judgment. Because it is impractical for every person who the Judgment will ultimately have an adverse impact on to join in this request, the Interested Organizations and the Individual Legislators—who each represent a broad section of farmers, ranchers, poultry growers, cattle producers, swine producers, private property owners, and small business owners—act as their voice. Therefore, the Interested Organizations and the Individual Legislators support Defendants’-Appellants’ Joint Motion for a Stay Pending Appeal (the “**Joint Motion to Stay**”).¹

The Individual Growers’ interest with respect to the Motion to Stay is that they will be the most directly impacted by immediate enforcement of the Judgment. Litter continues to accumulate on a daily basis. And, as they have in the past, the Individual Growers have intentions of either selling and/or applying the litter. But now, the Judgment purports to strip them of this income-producing asset and alternative to commercial fertilizer. Immediate

¹ Defendants’-Appellants’ Joint Motion to Stay was filed in each of Defendants-Appellants’ respective appeals as: ECF 23 in No. 26-5000; ECF 25 in No. 26-5001; ECF 25 in No. 26-5002; ECF 20 in No. 26-5003; ECF 25 in No. 26-5004; and ECF 20 in No. 26-5005.

enforcement of the Judgment would cause the Individual Growers to substantially alter the course of the business, take away their ability to generate additional income, and increase input costs for much needed fertilizer, all in an effort to comply with a judgment that, they believe, will likely be reversed by this Court.² Therefore, the Individual Growers support Defendants'-Appellants' Motion to Stay.

**STATEMENTS REGARDING CONSENT TO FILE, AUTHORSHIP,
AND FINANCIAL CONTRIBUTIONS**

The Defendants-Appellants consent to the filing of this brief. Plaintiffs-Appellees have not given their consent for the filing of this brief. No counsel for a party authored this brief, in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than Amici Curiae, their members, or their counsel, made any such monetary contribution.

² Amici recognizes that certain Defendants-Appellants have reached proposed settlements with the State after the District Court entered the Judgment. See Amici Add. at 140–145, 173–179, 202–208. However, unless or until the District Court grants Defendants'-Appellants' joint motions for entry of their consent judgments, the Judgment is still in effect. And the terms of the various proposed consent judgments, which allow for land application of poultry litter in the IRW over the next seven years, see Amici Add. at 51, 185–186, 214, further undermine the potential of irreparable harm that the State has argued in support of the Judgment. Furthermore, if the District Court were to approve some or all of the consent judgments while other Defendants-Appellants remain subject to the Judgment pending this appeal, this would only add confusion as to which regime applies to which landowners or growers, especially for those growers that are in contract with multiple integrators.

ARGUMENTS AND AUTHORITIES

I. Allowing the Judgment to Continue to be Enforced Pending Appeal Will Devastate Oklahoma Farmers and Landowners.

Defendants'-Appellants' Joint Motion to Stay asserts that a stay of the District Court's December 19, 2025 judgment (the "**Judgment**") is proper considering "(1) the likelihood of success on the merits; (2) the threat of irreparable harm absent a stay; (3) whether granting a stay will substantially injure the opposing party; and (4) the public interest." Joint Motion to Stay, at 11 (citing *Nken v. Holder*, 556 U.S. 418, 434 (2009)). Amici Curiae submit this brief to further address the threats of irreparable harm to non-parties absent a stay and the public's interest in this Court granting a stay.

The Judgment creates numerous problems not only for the Defendants-Appellants, but also countless Oklahoma and Arkansas poultry growers, litter-applicators, farmers, ranchers, landowners, and small business owners in and around the Illinois River Watershed (the "**IRW**"). This latter group of individuals were neither parties to the underlying District Court action nor given notice and an opportunity to be heard prior to the issuance of the Judgment. Thus, the immediate impacts of the Judgment on these non-parties are principally concerning to the Amici.

First and foremost, the Judgment prohibits applications in the IRW of poultry litter produced from birds owned by the Defendants-Appellants unless

and until such applications are approved by the court-appointed master. Yet, the monetary portions of the Judgment have been stayed such that the master is not funded, which effectively creates a moratorium on all applications of litter in the IRW if such litter originated from Defendants'-Appellants' birds. Accordingly, the Judgment has had and will continue to impose harsh economic consequences on poultry growers, litter-applicators, farmers, ranchers, landowners, and small business owners in the IRW. Second, the Judgment cloaks the master in judicial authority to visit private landowners' property, perform testing, and make determinations concerning the use of such persons' property, despite failing to give notice and an opportunity to be heard to such non-parties.

These detrimental consequences of the Judgment further illustrate the necessity of a stay in this matter, particularly given the impacts on private property rights without affording due process.

A. The temporary lack of funding for the master has effectively created a moratorium on poultry litter application for numerous non-parties to this litigation.

The Judgment provides a process for appointing a master “to implement and oversee th[e] judgment.” Add. 11.³ Part of the to-be-appointed master’s (and his watershed monitoring team’s (the “WMT”) responsibilities under the Judgment are to: (i) “mak[e] periodic inspections of each Company Farm,

³ “Add.” refers to Appellants’ Addendum, “State’s Add.” refers to the State’s Addendum, and “Amici Add.” refers to the Amici’s Addendum.

Contract Grower Farm, and land application site to procure samples of Poultry Waste, soil, and/or water,” Add. 12; (ii) “monitor[] compliance with th[e] judgment,” Add. 11; and (iii) “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,” Add. 12. Moreover, no person in the IRW can apply poultry litter “generated by the Defendants’ Birds” until the master or his team conducts an STP (soil test phosphorous) on the property and approves such application. Add. 20–21. As such, unless and until the master and his team have conducted STPs on the lands within the IRW, no landowner may apply litter generated from Defendants-Appellants’ birds.

The Judgment further requires the Defendants-Appellants to “pay to an account set up and designated by the master all costs and expenses” of the master and his team. Add. 18 (emphasis added). However, a stay has already been placed with respect to this portion of the Judgment, such that the master and his team will not be funded during the pendency of this appeal. *See Amici* Add. 3–4. Because of the District Court’s partial stay of the Judgment, the master and his team will not be funded until after this appeal, and, therefore, will not perform any of the required testing to establish STP levels for the lands in the IRW. Accordingly, the partial stay of the Judgment has created a more strenuous permanent injunction than the District Court likely intended—one

that prohibits the application of any litter in the IRW if such litter was generated by Defendants-Appellants' birds—by requiring exportation of all litter from Defendants-Appellants' birds to areas outside of the IRW.

The moratorium on poultry litter applications from Defendants-Appellants' birds will have significant economic consequences on both the Defendants-Appellants and individual producers and landowners in the IRW. The Defendants-Appellants have already raised their economic concerns. *See* Joint Motion to Stay, 22–24. More pressingly, though, the moratorium has already impacted the availability and price of litter for IRW landowners seeking to utilize poultry litter as a fertilizer. Numerous growers and agriculturists have offered testimony describing the economic hardships their operations face from the inability to apply the litter from Defendants'-Appellants' birds, in addition to the adverse consequences stemming from the District Court's conclusion that the litter is the property of Defendants-Appellants as opposed to that of the individual growers. *See e.g.*, Ex. 1, Declaration of Kyle & Megan Langley, ¶¶ 3–7; Ex. 2, Declaration of Jason & LouAnn Hays, ¶¶ 3–7; Ex. 3, Declaration of Steve Butler, ¶¶ 3–7; Ex. 4, Declaration of Mike & Shandra Langley, ¶¶ 3–7; Ex. 5, Declaration of Roy & Jennifer Teague, ¶¶ 3–7; Ex. 6, Declaration of Sean Clark, ¶¶ 3–6; Ex. 7, Declaration of Anthony Simpson, ¶¶ 3–6. These same concerns

were previously raised to the District Court in connection with the Plaintiffs'-Appellees' application for a preliminary injunction. *See* Amici Add. 30–65.⁴

Further, numerous landowners rely extensively on poultry litter as fertilizer for their agricultural production practices. It does not take an economist to predict that the forced exportation of the litter from “some of the biggest operators within the watershed” will have a major impact on the market for available litter. *See* State Add. 11 (citation omitted). Ultimately, the economic impact and hardships that the Judgment has on poultry growers, litter-applicators, farmers, ranchers, landowners, and small business owners in the IRW are significant. That such hardships are monetarily quantifiable does not mean that the injury is not irreparable. *See e.g., Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 356 F.3d 1256, 1263–64 (10th Cir. 2004) (identifying factors supporting irreparable harm determinations as including the “inability to calculate damages, harm to goodwill, diminishment of competitive positions in marketplace . . . and lost opportunities to distribute unique products”). Because the financial harm to poultry growers, litter-applicators, farmers, ranchers, landowners, and small business owners in and around the IRW is, in the aggregate, both significant and certain to occur, the harm to these non-

⁴ Even those poultry producers who do not contract with the Defendants-Appellants express sincere concerns about the impact of the Judgment, and particularly with the forced exportation of poultry litter creating a surplus in the exportation market outside of the IRW and significantly decreasing the prices available on their exportation contracts. *See* Ex. 6, Clark Decl., ¶¶ 3–6.

parties is also irreparable. *See Prairie Band of Potawatomi Indians v. Pierce*, 253 F.3d 1234, 1250 (10th Cir. 2001).

B. The Judgment cloaks the special master with judicial immunity in visiting and performing various tasks on the private property of non-party landowners who were not given notice and an opportunity to be heard.

In addition to the other powers afforded to the master and his team, the Judgment confers upon the master “judicial immunity in performing the master’s duties as authorized by the orders of this court,” and grants the WMT and other advisors to the master “judicial immunity in performing services at the direction of the master and within the scope of this judgment or court-approved engagement.” Add. 20. While granting judicial immunity to these various individuals, the Judgment also directs them to visit the private property of non-party landowners to perform and administer testing services and ensure compliance with the Judgment. Add. 11–12, 20–21 (authorizing master to monitor compliance with the Judgment, prepare nutrient management plans, make periodic inspections of any land application site to procure samples of Poultry Waste, and inspect records of Contract Growers).⁵

The Judgment’s impact on these non-party landowners (those desiring to apply Defendants-Appellants’ poultry litter) and growers (those contracted with

⁵ The Judgment also imposes upon the Appellants the duty to “ensure that the Contract Growers cooperate with the master, allow the master . . . access to the Defendants’ Company Farms and the Defendants’ Contract Grower Farms, and implement any nutrient management plans.” Add. 22.

Defendants-Appellants) are particularly concerning in light of the lack of notice to such non-parties. Indeed, the Judgment authorizes and commands the master to perform various services on the lands of these non-parties, all the while cloaking the master's actions in judicial immunity. Although there is a litany of concerns that stem from these authorizations in the Judgment, two aspects principally stand out to the Amici.

First, the Judgment appears to have judicially authorized the physical invasion of private property and performance of testing and potentially removal of soils from such property, despite failing to provide notice and an opportunity to be heard to such non-party property owners. *See Shaffer v. Heitner*, 433 U.S. 186, 206 (1977) (“Property cannot be subjected to a court’s judgment unless reasonable and appropriate efforts have been made to give the property owners actual notice of the action” (citations omitted)); *see also Schroeder v. City of New York*, 371 U.S. 208, 212 (1962) (“[T]he requirement that parties be notified of proceedings affecting their legally protected interests is obviously a vital corollary to one of the most fundamental requisites of due process—the right to be heard.”).

Second, the Judgment’s broad authorization of the master and the WMT impacts both private landowners and the Defendants-Appellants’ contract

growers from a biosecurity standpoint.⁶ Specifically, each of the Individual Growers (in addition to the numerous other non-party contract growers) employ rigorous biosecurity practices on their poultry operations. *See e.g.*, Ex. 1, Declaration of Kyle & Megan Langley, ¶ 7; Ex. 2, Declaration of Jason & LouAnn Hays, ¶ 7; Ex. 3, Declaration of Steve Butler, ¶ 7; Ex. 4, Declaration of Mike & Shandra Langley, ¶ 7; Ex. 5, Declaration of Roy & Jennifer Teague, ¶ 7; Ex. 6, Declaration of Sean Clark, ¶ 6; Ex. 7, Declaration of Anthony Simpson, ¶ 6. These biosecurity measures are “used to keep diseases and pathogens away from flocks of chickens on poultry farms, [and] include[e] washing hands before and after coming into contact with live poultry; providing disposable foot covers and disinfectant footbaths; [and] changing clothes before and after entering a property.” *Breaking Free, LLC v. JCG Foods of Alabama, LLC*, No. 4:18-CV-01659-ACA, 2021 WL 2139052, at * 3 (N.D. Ala. May 26, 2021). As the *Breaking Free* Court noted, these biosecurity measures also include:

[L]imiting visitors at a farm because all farm visitors pose disease risk to poultry farms through infected fecal matter that sticks to shoes or clothing and that can be tracked into a different poultry house. Proper biosecurity measures reduce—but do not fully eliminate—the risk of a grower’s flock becoming

⁶ These same concerns with the biosecurity implications of permitting the master and WMT access to the contract growers’ facilities are also present—albeit to a lesser extent given their familiarity with the industry practices—with the Defendants-Appellants new obligations to ensure the contract growers’ compliance with the Judgment’s terms for the removal of poultry waste.

infected with avian flu and other diseases that threaten the commercial poultry industry.

Id. (citations omitted). So too here.

As reflected in the Declarations of the Individual Growers, there are serious biosecurity concerns with the Judgment's broad authorization for the master and the WMT, without any requirement or acknowledgement that such personnel should comply with industry-standard biosecurity measures before visiting or accessing such facilities. Instead, the Judgment cloaks such individuals with judicial immunity and broad authority. Not only do the District Court's appointed personnel have the power to visit the contract growers' facilities without complying with the growers' biosecurity requirements, but they also are immunized from any harm that they could cause to such non-parties' operations. These concerns only further underscore the irreparable harm that the non-parties face by virtue of the Judgment.

C. The public interest favors a stay of the Judgment.

Each of these criticisms and frustrations that the Judgment creates for non-parties not only serve as examples for the impropriety of the Judgment but also demonstrate that the public interest is served by staying the Judgment. Indeed, as acknowledged by the Defendants-Appellants, the Judgment precludes widespread use of poultry litter in the IRW from the Defendants-Appellants' birds, which imposes unrecoverable costs on farmers and ranchers, including

some of the Amici. *See* Joint Motion to Stay, at 26; *see generally* Ex. 1, Declaration of Kyle & Megan Langley, ¶¶ 4–5; and Ex. 4, Declaration of Mike & Shandra Langley, ¶¶ 4–5. These increased fertilizer costs are not compensable to such non-parties, nor does commercial fertilizer serve as an effective substitute for introducing organic material to the soil. *See id.*

The non-economic impacts of the Judgment also demonstrate the public’s interest in a stay. Currently, the Judgment has caused significant concern for agricultural producers in Oklahoma (farmers, ranchers, and poultry growers, alike). The contract growers have biosecurity concerns not recognized in the Judgment, and the public undoubtedly has an interest in maintaining the health and safety of the poultry population in the IRW and beyond. Furthermore, the Judgment’s impact on non-parties’ contract and property rights—without providing such non-parties notice and an opportunity to be heard—cannot be overlooked. Such impact clearly raises procedural due process questions, in addition to the public’s interest in protecting these private contract and property rights. This factor also supports imposition of an appellate stay of the Judgment.

CONCLUSION

Based upon the above and foregoing authorities, the Amici respectfully request the Court to stay the District Court’s Judgment pending appeal by granting Defendants’-Appellants’ Joint Motion for a Stay Pending Appeal.

Respectfully submitted,

s/Gatlin C. Squires

Gatlin C. Squires, OBA #34795

Garrett J. Reed, OBA #35205

McAfee & Taft A Professional Corporation

Eighth Floor, Two Leadership Square

211 North Robinson Avenue

Oklahoma City, OK 73102

Telephone: (405) 235-9621

Facsimile: (405) 235-0439

gatlin.squires@mcafeetaft.com

garrett.reed@mcafeetaft.com

***Counsel for Oklahoma Farm Bureau,
Oklahoma Cattlemen's Association,
Oklahoma Pork Council, Individual
Legislators, and Individual Growers***

CERTIFICATE OF COMPLIANCE WITH F.R.A.P. 27

Pursuant to F.R.A.P. 27(d)(2)(A), I hereby certify that I am counsel for Amici in this case, that the foregoing Brief of Amici Curiae complies with the type-volume limitation of such rule because it contains 2,901 words, excluding the parts of the brief exempted by F.R.A.P. 32(f), as counted automatically by the word-processing system used to prepare the brief.

I also hereby certify that this brief complies with the typeface requirements of F.R.A.P. 32(a)(5) and the type style requirements of F.R.A.P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Office Word 2003 in 13 point Century Schoolbook font.

s/Gatlin C. Squires

CERTIFICATE OF SERVICE

This is to certify that on this 16th day of February, 2026, I electronically filed the foregoing using the Court's CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Gatlin C. Squires

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

STATE OF OKLAHOMA ex rel.
GENTNER DRUMMOND, in his
capacity as Attorney General of the
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*Plaintiffs - Appellees / Cross-
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v.

CAL-MAINE FOODS, INC.,

*Defendant - Appellant / Cross-
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and

TYSON FOODS, INC., et al.,

Defendants / Cross-Appellees.

No. 26-5000

Consolidated with:

No. 26-5001, No. 26-5002,

No. 26-5003, No. 26-5004,

No. 26-5005, No. 26-5010

D.C. No. 4:05-CV-00329-GKF-SH

N.D. Okla.

DECLARATION OF KYLE AND MEGAN LANGLEY

Pursuant to 28 U.S.C. § 1746, Kyle Langley and Megan Langley, being
of lawful age, state as follows:

1. Our names are Kyle Langley and Megan Langley, and we are
husband and wife. We are both over 18 years of age, of sound mind and body,
and competent to testify to the matters stated herein.

2. We are nonparties in the above-referenced appeal. We are also
nonparties to the underlying District Court action, Case No. 4:05-CV-00329-

GKF-SH in the United States District Court for the Northern District of Oklahoma.

3. We are poultry growers near Westville, Oklahoma, in Adair County. Our farm lies within the Illinois River Watershed. We have been poultry growers since 2015. We own and operate our poultry business as Egg Drop, LLC and are contracted with Simmons Foods, Inc. to raise layers (i.e., chickens that are raised for egg production). Our farm consists of 2 poultry houses and raises nearly 28,000 birds at any given time on our farm.

4. Our farm produces approximately 240 tons of chicken litter per year. We apply the poultry litter to our own property as fertilizer for growing grass for cattle. If we are unable to apply our litter, we will incur costs of approximately \$5,000 per year to apply commercial fertilizer instead of using poultry litter. We also sell the bulk of our poultry litter to surrounding farmers and ranchers for them to use the litter as an alternative to commercial fertilizer to apply to their hay fields and pastures. We typically sell poultry litter for \$9 per ton. Since the entry of the Judgment, we have been analyzing ways to export our litter outside of the Illinois River Watershed.

5. Our existing poultry contracts are set to expire this year. And we currently still owe on our mortgage for our poultry houses. If our contracts are not renewed, we are uncertain how we will be able to afford the remaining balance owed on our houses. It is doubtful that any other poultry integrator

that is not a defendant to this lawsuit would want to enter into a new contract with us given the uncertainty of this litigation. If our houses are empty, there is nothing else we can do with them to generate enough revenue to make our payments. Without birds in our houses, our farm will not cashflow.

6. Our actions on our farm are subject to our existing nutrient management plan and are regulated under the Oklahoma Registered Poultry Feeding Operations Act codified at 2 Okla. Stat. §§ 10-9–10-9.12.

7. It is our understanding that the Judgment entered by the District Court vests certain rights in and to a master and watershed management team to periodically access, inspect, and conduct tests on our farm. These access rights raise our concerns with respect to the biosecurity of our flock. We adhere to industry-standard biosecurity measures to prevent potential exposure to our flock of certain diseases, many of which are zoonotic that can be spread between animals and humans. These protocols include but are not limited to: restricting the number of visitors to our farm, wearing appropriate PPE (personal protective equipment), handwashing and footbaths, and sanitizing tires on vehicles from other farms. To the extent the Court-appointed master and watershed management team intend to visit our property, we would be highly concerned about the health and wellbeing of our birds absent such individuals' compliance with our biosecurity measures.

[Signature Page Immediately Follows]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Kyle Langley
Kyle Langley

2-15-26
Date

Westville, OK
City/State of Execution

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Megan Langley
Megan Langley

2-15-26
Date

Westville, OK
City/State of Execution

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N.D. Okla.

DECLARATION OF JASON AND LOUANN HAYS

Pursuant to 28 U.S.C. § 1746, Jason Hays and LouAnn Hays, being of
lawful age, state as follows:

1. Our names are Jason Hays and LouAnn Hays, and we are husband
and wife. We are both over 18 years of age, of sound mind and body, and
competent to testify to the matters stated herein.

2. We are nonparties in the above-referenced appeal. We are also
nonparties to the underlying District Court action, Case No. 4:05-CV-00329-

GKF-SH in the United States District Court for the Northern District of Oklahoma.

3. We are poultry growers near Proctor, Oklahoma, in Cherokee County. Our farm lies within the Illinois River Watershed. We have been poultry growers for approximately 2 years. We own and operate our poultry business as R-3 Farms and are contracted with Tyson to raise broilers (i.e., chickens that are raised for meat production). Our farm consists of 3 poultry houses and raises nearly 84,000 birds at any given time on our farm. In addition to poultry production, we also raise beef cattle.

4. Our farm produces approximately 400 tons of chicken litter per year. We apply the poultry litter to our own property as fertilizer for growing grass for cattle. If we are unable to continue applying the litter, we will likely have to reduce our cowherd size due to the reduction in forage production on our property for our cattle. We anticipate the carrying capacity of our property without poultry liter application will require us to reduce the size of our cowherd, which given the already thin margins in the agricultural industry, is likely to significantly impact our ability to continue operating. We also sell the bulk of our poultry litter to surrounding ranchers in the Illinois River Watershed for them to use the litter as an alternative to commercial fertilizer to apply to their hay fields and pastures. We typically sell poultry litter for \$17 per ton.

5. Our existing poultry contracts are set to expire within the next 5 years. And we currently still owe on our mortgage for our poultry houses. If our contracts are not renewed, we are uncertain how we will be able to afford the remaining balance owed on our houses. It is doubtful that any other poultry integrator that is not a defendant to this lawsuit would want to enter into a new contract with us given the uncertainty of this litigation. If our houses are empty, there is nothing else we can do with them to generate enough revenue to make our payments. Without birds in our houses, our farm will not cashflow and we will be forced to file bankruptcy due to the inability to service the debts

6. Our actions on our farm are subject to our existing nutrient management plan and are regulated under the Oklahoma Registered Poultry Feeding Operations Act codified at 2 Okla. Stat. §§ 10-9–10-9.12.

7. It is our understanding that the Judgment entered by the District Court vests certain rights in and to a master and watershed management team to periodically access, inspect, and conduct tests on our farm. These access rights raise our concerns with respect to the biosecurity of our flock. We adhere to industry-standard biosecurity measures to prevent potential exposure to our flock of certain diseases, many of which are zoonotic that can be spread between animals and humans. These protocols include but are not limited to: restricting the number of visitors to our farm, wearing appropriate PPE (personal protective equipment), handwashing and footbaths, and sanitizing

tires on vehicles from other farms. To the extent the Court-appointed master and watershed management team intend to visit our property, we would be highly concerned about the health and wellbeing of our birds absent such individuals' compliance with our biosecurity measures.

[Signature Page Immediately Follows]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Jason Hays
Jason Hays

2-16-26
Date

Proctor, OK
City/State of Execution

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

R. LouAnn Hays
LouAnn Hays

2/16/26
Date

Proctor, OK
City/State of Execution

UNITED STATES COURT OF APPEALS
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D.C. No. 4:05-CV-00329-GKF-SH

N.D. Okla.

DECLARATION OF STEVE BULER

Pursuant to 28 U.S.C. § 1746, Steve Butler, being of lawful age, states
as follows:

1. My name is Steve Butler. I am over 18 years of age, of sound mind
and body, and competent to testify to the matters stated herein.

2. I am a nonparty in the above-referenced appeal. I am also a
nonparty to the underlying District Court action, Case No. 4:05-CV-00329-
GKF-SH in the United States District Court for the Northern District of
Oklahoma.

3. I am a poultry grower with farms near Watts and Westville, Oklahoma, in Adair County, and one farm near Siloam Springs, in Benton County, Arkansas. All of my farms lie within the Illinois River Watershed. I have been a poultry grower for over 30 years. I own and operate my poultry business through Green Country Farms, LLC and am contracted with Tyson, Simmons, and OK Foods to raise broilers (i.e., chickens that are raised for meat production). My farms consist of 125 poultry houses and raise approximately 2.3 million birds at any given time. In addition to poultry production, I also raise beef cattle and grow hay.

4. My farm produces approximately 15,000 tons of poultry litter per year. I sell nearly all of my poultry litter to farmers and ranchers outside of the Illinois River Watershed for them to use the litter as an alternative to commercial fertilizer. I typically sell the poultry litter for \$18-20 per ton. If all poultry litter derived from the Defendants'-Appellants' birds is required to be exported out of the Illinois River Watershed, then the market will become saturated with litter and drive the price down that I currently receive.

5. Four of my existing poultry contracts are set to expire next year. Another eight of my contracts are set to expire within the next four years. And I currently still owe on my mortgage for my poultry houses. If my contracts are not renewed, I am uncertain how I will be able to afford the remaining balance owed on my houses. It is doubtful that any other poultry integrator that is not

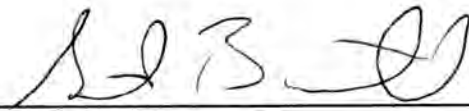
a defendant to this lawsuit would want to enter into a new contract with me given the uncertainty of this litigation. If my houses are empty, there is nothing else I can do with them to generate enough revenue to make my payments. Without birds in my houses, my farm will not cashflow.

6. My actions on my Oklahoma farms are subject to my existing nutrient management plan and are regulated under the Oklahoma Registered Poultry Feeding Operations Act codified at 2 Okla. Stat. §§ 10-9–10-9.12.

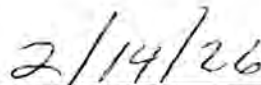
7. It is my understanding that the Judgment entered by the District Court vests certain rights in and to a master and watershed management team to periodically access, inspect, and conduct tests on my farm. These access rights raise my concerns with respect to the biosecurity of my flock. I adhere to industry-standard biosecurity measures to prevent potential exposure to my flock of certain diseases, many of which are zoonotic that can be spread between animals and humans. These protocols include but are not limited to: restricting the number of visitors to my farm, wearing appropriate PPE (personal protective equipment), handwashing and footbaths, and sanitizing tires on vehicles from other farms. To the extent the Court-appointed master and watershed management team intend to visit my property, I would be highly concerned about the health and wellbeing of my birds absent such individuals' compliance with my biosecurity measures.

[Signature Page Immediately Follows]

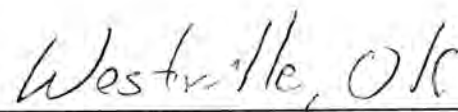
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Steve Butler



Date



City/State of Execution

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

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N.D. Okla.

DECLARATION OF MIKE AND SHANDRA LANGLEY

Pursuant to 28 U.S.C. § 1746, Mike Langley and Shandra Langley, being
of lawful age, state as follows:

1. Our names are Mike Langley and Shandra Langley, and we are
husband and wife. We are both over 18 years of age, of sound mind and body,
and competent to testify to the matters stated herein.

2. We are nonparties in the above-referenced appeal. We are also
nonparties to the underlying District Court action, Case No. 4:05-CV-00329-

GKF-SH in the United States District Court for the Northern District of Oklahoma.

3. We are poultry growers near Westville, Oklahoma, in Adair County. Our farm lies within the Illinois River Watershed. We have been poultry growers since 2010. We own and operate our poultry business as Diamond L Farms, LLC and are contracted with Simmons Foods, Inc. to raise layers (i.e., chickens that are raised for egg production) and pullets (i.e., female chickens that are raised to become layers once they reach a certain age). Our farm consists of 5 poultry houses and raises nearly 90,000 birds at any given time on our farm. In addition to poultry production, we also raise beef cattle.

4. Our farm produces approximately 120 tons of chicken litter per house per year. We apply the poultry litter to our own property as fertilizer for growing grass for cattle. If we are unable to apply our litter, we will incur costs of approximately \$25,000-\$30,000 per year to apply commercial fertilizer instead of using poultry litter. We also sell the bulk of our poultry litter to surrounding farmers and ranchers for them to use the litter as an alternative to commercial fertilizer on their to apply to their hay fields and pastures. We typically sell poultry litter for \$9 per ton. Since the entry of the Judgment, we have been analyzing ways to export our litter outside of the Illinois River Watershed.

5. Our existing poultry contracts are set to expire in the coming years. And we currently still owe on our mortgage for our poultry houses. If our contracts are not renewed, we are uncertain how we will be able to afford the remaining balance owed on our houses. It is doubtful that any other poultry integrator that is not a defendant to this lawsuit would want to enter into a new contract with us given the uncertainty of this litigation. If our houses are empty, there is nothing else we can do with them to generate enough revenue to make our payments. Without birds in our houses, our farm will not cashflow.

6. Our actions on our farm are subject to our existing nutrient management plan and are regulated under the Oklahoma Registered Poultry Feeding Operations Act codified at 2 Okla. Stat. §§ 10-9–10-9.12.

7. It is our understanding that the Judgment entered by the District Court vests certain rights in and to a master and watershed management team to periodically access, inspect, and conduct tests on our farm. These access rights raise our concerns with respect to the biosecurity of our flock. We adhere to industry-standard biosecurity measures to prevent potential exposure to our flock of certain diseases, many of which are zoonotic that can be spread between animals and humans. These protocols include but are not limited to: restricting the number of visitors to our farm, wearing appropriate PPE (personal protective equipment), handwashing and footbaths, and sanitizing tires on vehicles from other farms. To the extent the Court-appointed master

and watershed management team intend to visit our property, we would be highly concerned about the health and wellbeing of our birds absent such individuals' compliance with our biosecurity measures.

[Signature Page Immediately Follows]

I declare under penalty of perjury under the laws of the United States of
America that the foregoing is true and correct.

Mike Langley
Mike Langley

2-15-26
Date

Westville, OK
City/State of Execution

I declare under penalty of perjury under the laws of the United States of
America that the foregoing is true and correct.

Shandra Langley
Shandra Langley

2-15-26
Date

Westville, OK
City/State of Execution



UNITED STATES COURT OF APPEALS
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N.D. Okla.

DECLARATION OF ROY AND JENNIFER TEAGUE

Pursuant to 28 U.S.C. § 1746, Roy Teague and Jennifer Teague, being of
lawful age, state as follows:

1. Our names are Roy Teague and Jennifer Teague, and we are
husband and wife. We are both over 18 years of age, of sound mind and body,
and competent to testify to the matters stated herein.

2. We are nonparties in the above-referenced appeal. We are also
nonparties to the underlying District Court action, Case No. 4:05-CV-00329-

GKF-SH in the United States District Court for the Northern District of Oklahoma.

3. We are poultry growers near Watts, Oklahoma, in Adair County. Our farm lies within the Illinois River Watershed. We have been poultry growers for approximately 32 years. We own and operate our poultry business as Teague Farm and are contracted with Tyson and Cobb-Vantress to raise breeders (i.e., chickens that are raised to produce fertile eggs to then hatch broilers—chickens that are raised for meat production—or layers—chickens that raised for egg production). Our farm consists of two poultry houses, each housing approximately 20,000 birds. In addition to poultry production, we also raise beef cattle.

4. Our farm produces approximately 300 tons of chicken litter per year. We apply the poultry litter to our own property as fertilizer for growing grass for cattle. We also sell the bulk of our poultry litter to surrounding farmers and ranchers for them to use the litter as an alternative to commercial fertilizer. We typically sell the poultry litter in 10-ton loads for \$125 per load, which equates to approximately \$12.50 per ton.

5. Our existing poultry contracts are set to expire in 2027. And we currently still owe on our mortgage for our poultry houses. If our contracts are not renewed, we are uncertain how we will be able to afford the remaining balance owed on our houses. It is doubtful that any other poultry integrator

that is not a defendant to this lawsuit would want to enter into a new contract with us given the uncertainty of this litigation. If our houses are empty, there is nothing else we can do with them to generate enough revenue to make our payments. Without birds in our houses, our farm will not cashflow.

6. Our actions on our farm are subject to our existing nutrient management plan and are regulated under the Oklahoma Registered Poultry Feeding Operations Act codified at 2 Okla. Stat. §§ 10-9–10-9.12.

7. It is our understanding that the Judgment entered by the District Court vests certain rights in and to a master and watershed management team to periodically access, inspect, and conduct tests on our farm. These access rights raise our concerns with respect to the biosecurity of our flock. We adhere to industry-standard biosecurity measures to prevent potential exposure to our flock of certain diseases, many of which are zoonotic that can be spread between animals and humans. These protocols include but are not limited to: restricting the number of visitors to our farm, wearing appropriate PPE (personal protective equipment), handwashing and footbaths, and sanitizing tires on vehicles from other farms. To the extent the Court-appointed master and watershed management team intend to visit our property, we would be highly concerned about the health and wellbeing of our birds absent such individuals' compliance with our biosecurity measures.

[Signature Page Immediately Follows]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Roy Teague
Roy Teague

2-15-26
Date

Watts, OK
City/State of Execution

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Jennifer Teague
Jennifer Teague

2-15-26
Date

Watts, OK
City/State of Execution

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N.D. Okla.

DECLARATION OF SEAN CLARK

Pursuant to 28 U.S.C. § 1746, Sean Clark, being of lawful age, states as follows:

1. My name is Sean Clark. I am over 18 years of age, of sound mind and body, and competent to testify to the matters stated herein.

2. I am a nonparty in the above-referenced appeal. I am also a nonparty to the underlying District Court action, Case No. 4:05-CV-00329-GKF-SH in the United States District Court for the Northern District of Oklahoma.

3. I am a poultry grower that operates in Adair, Delaware, and Sequoyah Counties in Oklahoma and in Benton and Washington Counties in Arkansas. Several of my farms lie within the Illinois River Watershed. I have been a poultry grower since approximately 2015. I own and operate my poultry business through Clark Farms, LLC and am contracted with Handsome Brook Farms, OP Farms, and Pete & Gerry's to raise layers (i.e., chickens that are raised for egg production). My farms consist of 33 poultry houses and raise approximately 362,400 birds at any given time. In addition to poultry production, I also raise beef cattle, swine, sheep, goats, white bison, and zebras.

4. My farm produces approximately 4,200 tons of poultry litter per year. I sell nearly all of my poultry litter to farmers and ranchers outside of the Illinois River Watershed for them to use the litter as an alternative to commercial fertilizer. I typically sell the poultry litter for \$20 per ton. I am not contracted with any of the Defendants-Appellants. However, I am concerned that if all poultry litter derived from the Defendants'-Appellants' birds is required to be exported out of the Illinois River Watershed, then the market will become saturated with litter and drive the price down that I am currently able to receive. I am also concerned about the chilling effect the District Court's Judgment will have on other poultry integrators' (that are not defendants to this lawsuit) willingness to invest in infrastructure and contract with other

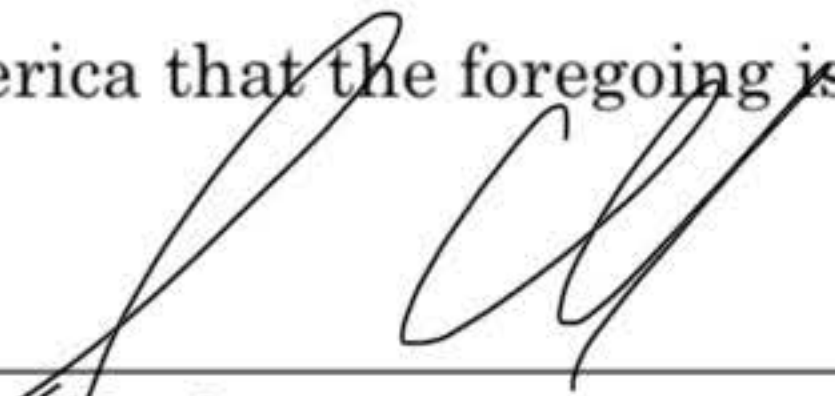
growers within the Illinois River Watershed given the uncertainty the Judgment brings.

5. My actions on my Oklahoma farms are subject to my existing nutrient management plan and are regulated under the Oklahoma Registered Poultry Feeding Operations Act codified at 2 Okla. Stat. §§ 10-9–10-9.12.

6. It is my understanding that the Judgment entered by the District Court vests certain rights in and to a master and watershed management team to periodically access, inspect, and conduct tests on farms with whom are contracted with the Defendants-Appellants. These access rights raise my concerns with respect to the biosecurity of surrounding flocks. I adhere to industry-standard biosecurity measures to prevent potential exposure to my flock of certain diseases, many of which are zoonotic that can be spread between animals and humans. These protocols include but are not limited to: restricting the number of visitors to our farm, wearing appropriate PPE (personal protective equipment), handwashing and footbaths, and sanitizing tires on vehicles from other farms. To the extent the Court-appointed master and watershed management team intend to visit other poultry growers' property, and then visited my property, I would be highly concerned about the health and wellbeing of my birds absent such individuals' compliance with my biosecurity measures.

[Signature Page Immediately Follows]

I declare under penalty of perjury under the laws of the United States of
America that the foregoing is true and correct.



Sean Clark

2/16/2026
Date

Stilwell, OK
City/State of Execution

UNITED STATES COURT OF APPEALS
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N.D. Okla.

DECLARATION OF ANTHONY SIMPSON

Pursuant to 28 U.S.C. § 1746, Anthony Simpson, being of lawful age,
state as follows:

1. My name is Anthony Simpson. I am over 18 years of age, of sound
mind and body, and competent to testify to the matters stated herein.

2. I am a nonparty in the above-referenced appeal. I am also a
nonparty to the underlying District Court action, Case No. 4:05-CV-00329-
GKF-SH in the United States District Court for the Northern District of
Oklahoma.

3. I am a poultry grower near Tahlequah, Oklahoma, in Cherokee County. My farm lies within the Fort Gibson Watershed, which borders the Illinois River Watershed. I have been a poultry grower for approximately 15 years. I own and operate my poultry business with my parents and sons as Simpson Farms and am contracted with Simmons to raise broilers (i.e., chickens that are raised for meat production). My farm consists of 6 poultry houses, each housing approximately 41,000 birds. In addition to poultry production, I also grow approximately 700 acres of hay.

4. My farm produces approximately 2,400 tons of chicken litter per year. I apply the poultry litter to our own property as fertilizer for growing hay. I also sell approximately one-third of my poultry litter to surrounding farmers and ranchers for them to use the litter as an alternative to commercial fertilizer. I typically sell the poultry litter for \$25 per ton. If all poultry litter derived from the Defendants'-Appellants' birds is required to be exported out of the Illinois River Watershed, then the market will become saturated with litter and drive the price down that I am currently able to receive.

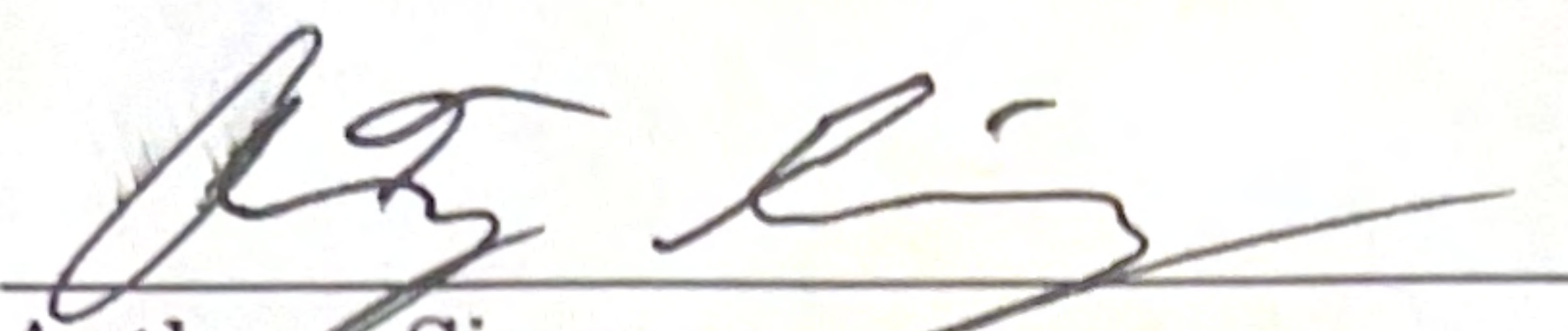
5. My actions on my farm are subject to my existing nutrient management plan and are regulated under the Oklahoma Registered Poultry Feeding Operations Act codified at 2 Okla. Stat. §§ 10-9–10-9.12.

6. It is my understanding that the Judgment entered by the District Court vests certain rights in and to a master and watershed management team

to periodically access, inspect, and conduct tests on farms with whom are contracted with the Defendants-Appellants in the Illinois River Watershed. These access rights raise my concerns with respect to the biosecurity of surrounding flocks. I adhere to industry-standard biosecurity measures to prevent potential exposure to my flock of certain diseases, many of which are zoonotic that can be spread between animals and humans. These protocols include but are not limited to: restricting the number of visitors to our farm, wearing appropriate PPE (personal protective equipment), handwashing and footbaths, and sanitizing tires on vehicles from other farms. To the extent the Court-appointed master and watershed management team intend to visit other poultry growers' property, I would be highly concerned about the health and wellbeing of those birds absent such individuals' compliance with the farm's biosecurity measures and any diseases that could potentially spread to my flocks.

[Signature Page Immediately Follows]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.


Anthony Simpson

2-16-26
Date

Tahlequah, Oklahoma
City/State of Execution

**Nos. 26-5000, 26-5001, 26-5002, 26-5003, 26-5004, 26-5005, 26-5010
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,

v.

TYSON FOODS, INC., ET AL.,

Defendants-Appellants.

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

**ADDENDUM TO BRIEF OF *AMICI CURIAE* REGARDING THE
DEFENDANTS-APPELLANTS' JOINT MOTION FOR A STAY
PENDING APPEAL**

Gatlin C. Squires, OBA #34795
Garrett J. Reed, OBA #35205
McAfee & Taft A Professional
Corporation
8th Floor, Two Leadership Square
211 North Robinson
Oklahoma City, OK 73102
Telephone: (405) 270-6096
Facsimile: (405) 270-7212
gatlin.squires@mcafeetaft.com
garrett.reed@mcafeetaft.com

COUNSEL FOR AMICI CURIAE

February 16, 2026

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/s/ Gatlin C. Squires

Gatlin C. Squires, OBA #34795

Garrett J. Reed, OBA #35205

McAfee & Taft A Professional Corporation

8th Floor, Two Leadership Square

211 North Robinson

Oklahoma City, OK 73102

Telephone: (405) 270-6096

Facsimile: (405) 270-7212

gatlin.squires@mcafeetaft.com

garrett.reed@mcafeetaft.com

COUNSEL FOR AMICI CURIAE

CERTIFICATE OF SERVICE

This is to certify that on this 16th day of February, 2026, I electronically filed the foregoing using the Court's CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Gatlin C. Squires

**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.)

Case No. 05-CV-00329-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.)

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. *See 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. Irreparable Injury to Defendants

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. Substantial Injury to the State

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.

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 factor 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

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

STATE OF OKLAHOMA, ex rel. W.A.)
DREW EDMONDSON, in his capacity as)
ATTORNEY GENERAL OF THE STATE)
OF OKLAHOMA AND OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT, in his capacity as the)
TRUSTEE FOR THE NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)

Plaintiff,

v.

Case No. 05-CV-00329 GKF-SAJ

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

Defendant.

**BRIEF OF *AMICUS CURIAE* OKLAHOMA FARM BUREAU INC.
IN OPPOSITION TO
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION [Dkt 1373]**

It is odd that two Oklahoma officials would seek relief that would change the face of agriculture by its direct effects in a million acres of land in two states without including any of the agencies statutorily granted power over activities targeted or any of the people whose livelihoods would be impacted. It is odd that they would use a draconian request for a preliminary injunction as the vehicle to achieve an interpretation of RCRA that would, if established, prohibit the use of animal manure as fertilizer anywhere, particularly since their

interpretation conflicts with more than 25 years of EPA construction and flies in the face of the choices and actions of the one state agency to whom the legislature has entrusted the subject matter. It is odd that they would attempt to use a United States District Court as the venue for an end run around the state's legislative and regulatory bodies while claiming for themselves an unwarranted mantle of the state's authority and interest. Odd but true.

Oklahoma statutorily allocated its environmental protection and enforcement responsibility among various administrative agencies. The State of Oklahoma assigned responsibility for environmental regulation and environmental enforcement in matters related to animal wastes and fertilizers to the Department of Agriculture ("ODAFF"). *See*, OKLA. STAT. tit. 27A, § 1-2-101(D) ("The Oklahoma Department of Agriculture, Food and Forestry shall have the following jurisdictional areas of environmental responsibility...(a) point source discharges and nonpoint source runoff from agricultural production, agricultural services, livestock production, silviculture, feed yards, livestock markets and animal waste, [and] (d) fertilizer.") Pursuant to its grant of jurisdiction from the legislature, ODAFF extensively regulates the use of poultry litter as a fertilizer. *See* generally, discussion of Oklahoma's extensive regulatory structure governing poultry litter at pp. 4-10 of [Dkt 1530] Defendants George's, Inc. and George's Farms, Inc.'s Separate Response Brief in Opposition to Plaintiff's Motion for Preliminary Injunction. *See also* Exhibits ("Ex.") 1-8, 10-12 hereto. For instance ODAFF regulates who can apply poultry litter to land, requiring a certificate, and prescribing qualifications and continuing education requirements for litter applicators. *See* Oklahoma Poultry Waste Applicators Certification Act, OKLA. STAT. tit. 2, §§ 10-9.16-10-9.21. ODAFF regulates the use of poultry litter as a fertilizer, requiring that application be governed by an Animal Waste Management Plan ("AWMP") under which soil chemistry determines the frequency and volume of allowed litter application as

fertilizer. *See* 2 Okla. Stat. §§ 10-9.7.C; OAC §§ 35:17-5-5; OAC 35:17-5-3(b)(3). *See, also*, Ex. 11, "Code 590," the Conservation Practice Standard for Nutrient Management by which AWMs are individually designed for each farm by the U.S. Department of Agriculture Natural Resource Conservation Service or State agency experts, and Ex. 12, actual Animal Waste Management Plans of affiant Betty Anderson (Ex. 1) and her husband Bill.

Oklahoma as a state, and the families who rely on agriculture as the basis for their living, and others simply interested in the issues have actively addressed matters of water quality and animal waste through regulatory and non-regulatory mechanisms, including legislation, water quality standards, the federal-state 319 nonpoint source program, a state income tax incentive, and USDA Natural Resources Conservation Service's conservation cost share programs. Ex. 10, Affidavit of Marla Peek, Oklahoma Farm Bureau's Director of Regulatory Affairs. Oklahoma agriculture is also regulated by the Clean Water Act and other federal laws. *See, e.g.*, 33 U.S.C. § 1251 *et. seq.* These state and federal programs have been crafted by citizens, industry, regulators, and legislators after much study. Ex. 10. Plaintiffs ask the Court to judicially override these and other programs that the United States and the State of Oklahoma have mandated or encouraged, and that farming and ranching families have relied upon in managing their businesses. *See* Exs. 1 through 8, 10, 12.

The grant of an injunction would necessarily prohibit activities that are specifically allowed pursuant to regulations issued by the ODAFF, and would be financially devastating to agricultural producers in the watershed. Using the plaintiffs' figure of 347,000 tons of poultry litter produced annually in the Illinois River Watershed, the value of that litter is \$6,551,360, while the cost to replace only the nutrients in that amount of litter is \$36,661,304 as of February 13, 2008. Ex. 9, ¶¶ 6, 9. No attempt was made to measure the value of the litter with regard to

its organic matter, micronutrients, and any ability to increase pH in the soil. Ex. 9, ¶ 10. "It is clear from the affidavits submitted by Oklahoma Farm Bureau members, that they consider those aspects of poultry litter to provide great value to soil building and retention, as well as forage production." Affidavit of Michael Dicks, Ex. 9, ¶ 10.

It seems self-evident that the citizen suit provision of RCRA was not designed to enable state officials whom the legislature has not seen fit to empower with regulatory or enforcement jurisdiction to second guess the arm of state government to whom the responsibility and authority have been entrusted. Courts have not been sympathetic to attempted citizen suits that were no more than a collateral attack on the exercise of discretion necessarily implicated in regulatory and permitting responsibility. For instance, in *Greenpeace, Inc. v. Waste Technologies Industries*, 9 F.3d 1174, 1178 (6th Cir 1993), the Court rejected attempts to pursue a citizen suit against a defendant who was operating under a validly issued RCRA permit and who was not alleged to be in violation of that permit.

"First, when we read 42 U.S.C. § 6972(a) (1) (B) in the context of other RCRA provisions that specifically deal with permits, it is clear that Congress did not intend for § 6972(a) (1) (B) to authorize citizen suits against persons operating hazardous waste facilities within the limits of valid RCRA permits. However, even if Congress did intend to allow some citizen suits alleging risk of imminent and substantial endangerment to be brought against some permitted operators, it remains quite clear that § 6972(a)(1)(B) does not confer district court jurisdiction over this suit, because Greenpeace's complaint, like the similar complaint that the Fourth Circuit dismissed for lack of jurisdiction in *Palumbo* [989 F.2d 156 (4th Cir. 1993)], amounts to nothing more than an improper collateral attack on the prior permitting decisions of the U.S. EPA to allow the test and post-test burns. *Palumbo*, 989 F.2d at 159." *Greenpeace, Inc.*, 9 F.3d at 1178.

The principle prohibiting collateral attack on the regulatory process applies with particular force when the collateral attack comes from sister agencies of the state government who, have not been specifically entrusted with the responsibility of regulating poultry litter. What becomes of the legislative power to allocate duties and responsibilities if it can be flaunted

at the whim of an officer who is supposed to represent the state rather than go off on a frolic of his own?

Of what significance are separation of powers and the constitutional allocation of the power to influence laws to citizens, including Oklahoma Farm Bureau and its members? The early history of the United States reflects the ideology that gave birth to the free-speech guarantee. In crafting what became the United States Constitution, James Madison fulfilled the need to provide the minority position a platform to express its viewpoint by proposing what became the First Amendment to the Constitution to protect the right to speech and the freedom of the press. See John O. McGinnis, *Once and Future Property-based Vision of the First Amendment*, 63 U.Ch.L.Rev. 49, 73 n.103 (1996).

The right to petition for redress of grievances is historically the right to complain about and to the government. *Brock v. The Honorable Donald D. Thompson*, 1997 OK 127, 948 P.2d 279, 290 n. 37. The right of petition first appeared in the Magna Carta, and later was incorporated in the English Bill of Rights of 1689 before making it across the Atlantic to the United States. See, Stephen A. Higginson, *A Short History of the Right to Petition Government for the Redress of Grievances*, 96 Yale L.J. 142 (1986). Oklahoma's right-to-petition clause¹ is similar to, and no doubt taken from, Article I of the U.S. Constitution². As the Court notes in *Thomas v. Collins*, 323 U.S. 516, 530, 65 S.Ct. 315, 322, 89 L.Ed. 430 (1945), the right of petition is a basic freedom in a participatory government, closely related to freedom of speech.

¹ "The people have the right peaceably to assemble for their own good, and to apply to those invested with the powers of government for redress of grievances by petition, address, or remonstrance." OKLA. CONST. art. 2, § 3.

² "Congress shall make no law . . . abridging . . . the right of the people . . . to petition the government for a redress of grievances." U.S. CONST. amend. I.

Together these are the "indispensable democratic freedoms" that cannot be abridged if a government is to continue to reflect the desires of the people. *Id.*

Currently the governing body of the Oklahoma Department of Agriculture, the Board of Agriculture, is carefully constituted by statute to insure that a range of viewpoints are to be considered, a diversity requirement that doesn't constrain the ability of individual officials, like plaintiffs, to decide that everyone is out of step but them. OKLA. STAT. tit. 2, § 2-1. Perhaps more important, when regulatory and enforcement decisions are made by the agency on which the legislature has conferred jurisdiction, Oklahoma Farm Bureau and its members can and do meaningfully exercise their right to petition their government and have a voice in the creation and exercise of state environmental policy. Ex. 10. The Oklahoma Farm Bureau itself has long been involved as a participant in legislative and administrative proceedings that have resulted in the highly regulated environment in which Oklahoma poultry farmers, and farmers and ranchers generally, operate. Ex. 10. But, if the jurisdiction conferred by the legislature can be bypassed with the stroke of a pen on a federal court lawsuit, the constitutional right to petition granted in both the Oklahoma and federal Constitutions, has been nullified as effectively as if it was repealed. The voice of 168,000 OFB member families has been muted.

The Attorney General's motion portrays the public interest in simplistic terms -- the recreating public's right to clean water. But such absolutes rarely exist in the real world and never in the world of environmental policy. Setting environmental policy, as this motion asks the Court to undertake, always requires the consideration of a variety of factors, public health, science, economics, the contribution a particular policy would make to environmental protection and a multitude more. The Attorney General's view of the public interest is myopic -- public

interest has many faces, and they are the faces of real people. Some of the real people who would be hurt by the injunction have furnished affidavits. Their stories are summarized below.³

BETTY ANDERSON (See Ex. 1)

Betty Anderson and her husband Bill have been in the poultry business for 21 years, but were raising cattle for many years before that. The Andersons originally built their first poultry house to get the litter it would produce to fertilize the fields on which they raised hay to feed their cattle. They now have four pullet houses, two breeder houses, run about 250 mama cows and raise hay on 557 acres in Delaware County. If the application of poultry litter is banned in the Illinois River Watershed, it would not be cost effective for the Andersons to fertilize their grassland with commercial fertilizer.⁴ As a consequence their hay production would diminish and sage grass would return to their hay meadows. The Andersons would have to cut back by half on the number of cattle that they raise. Any finding that poultry litter is a solid waste would completely shut down the Anderson's poultry producing efforts due to the cost of disposing of tons of poultry litter rather than recycling it as they do now.

Since the Andersons have poultry houses, they also have Animal Waste Management Plans, as required under Oklahoma Statutes and regulations.⁵ They regularly take samples of the litter and the land on which it is to be applied, again as required by law. When the Attorney General sent his people to the Anderson farm to take soil samples, in a dramatic gesture they wore hazmat suits. Yet over the last twenty-one years no one has gotten sick from working around or being around litter. Moreover, the Andersons have been drinking their well water for

³ All facts in these individuals' stories are contained in their affidavits attached hereto as Exhibits 1 through 8, and in the affidavits provided by Oklahoma Farm Bureau's Director of Regulatory Affairs, Marla Peek (Ex. 10), and by economist Mike Dicks (Ex. 9).

⁴ Equivalent commercial fertilizer exceeds the cost of poultry litter by five to six times. One ton of litter, transported and spread, costs \$18.88; the nutrient equivalent in commercial fertilizer costs approximately 5.59 times that amount, or about \$105. See Ex. 9 and attached chart.

⁵ Exhibit 12 contains the Anderson's AWMPs.

more than sixty years, and no one has gotten sick from drinking water from wells that are on land on which litter has been applied as a fertilizer.

JOHNNY CARLILE (See Ex. 2)

Johnny Carlile is the fifth generation in his family to farm in Cherokee County. The Carlile ranch is approximately 600 to 700 acres, and Johnny has been raising cattle all his life. He currently runs between 100 and 150 head and raises the hay to feed them. He cuts hay once a year, then uses the field as a pasture. With the poultry litter he applies when he can get it, Mr. Carlile gets about four bales of hay to the acre. Mr. Carlile cannot put down commercial fertilizer because of the cost. See footnote 4 *infra*, and Ex. 9. At the current rate, the cost of commercial fertilizer is many times the cost of poultry litter. Using commercial fertilizer, a bale of hay would cost roughly double -- \$40 to \$50 a bale. Mr. Carlile is a believer in the benefits of natural fertilizer. His view is that when poultry litter is applied, it will grow grass where commercial fertilizer will not. The benefits he sees include adding organic matter, loosening the soil, and slowly releasing nutrients. Mr. Carlile believes that taking care of the land that provides his living is necessary if his grandson is to be able to achieve his dream of becoming the seventh generation to farm in Cherokee County.

JERRY HARE (See Ex. 3)

Jerry Hare is a member of the Cherokee Tribe who has ranched since 1968. His ranch is approximately 520 deeded acres, and he cuts hay from another 150 acres in Cherokee County. He runs cow/calf units, and uses poultry litter as fertilizer on his property on and off through the years depending upon his need to grow more hay. Mr. Hare has found that poultry litter is an excellent fertilizer for hay and forage production, and that it is much less expensive than commercial fertilizer. Mr. Hare does not consider litter either a discarded material or a waste because it is valuable to his ranching operations. The nutrient effects of litter last longer than the

effects of commercial fertilizer. He can see those effects on the second and third hay cuttings when he cuts hay that often. If the Attorney General is successful in securing an injunction preventing the land application of poultry litter, then it would definitely impact Mr. Hare's operations. He would not be able to raise as much hay, and would have to cut back on the number of cattle that he runs to whatever number the land would support without the use of either litter or commercial fertilizer. Mr. Hare lives on Barron Fork, which he considers "a jewel." His grandchildren swim there. No one has ever gotten sick from swimming in that water or from being around fields on which litter has been applied. Mr. Hare is "careful to take care of [his] land for future generations."

GENE COLBURN (See Ex. 4)

Gene Colburn is a rancher from Proctor, Oklahoma, who has been in cattle ranching for about 70 years. He runs cow/calf units and bales hay on approximately 710 acres in Cherokee County. Mr. Colburn uses poultry litter as fertilizer on his ranch when he can get it because it is better and less expensive than commercial fertilizer. When he purchases litter, he gets it from a Certified Poultry Waste Applicator. His experience tells him that spreaders will not put any more litter on land than is allowed by law. He takes and tests soil samples which let him know how much litter he can apply. Mr. Colburn believes that if he could not use litter as a fertilizer and to enrich his soil, his operations would be negatively impacted. He would not be able to raise as much hay. "Commercial fertilizer is expensive and doesn't do the job that litter does since commercial fertilizer is so short lasting." If the Attorney General is successful in this lawsuit, Mr. Colburn would have to do without fertilizer and cut back on the number of cattle that he runs.

RON TIMMONS (See Ex. 5)

Ron Timmons' ranch, the "Bar T Bar," consists of approximately 880 acres on which he raises cattle and hay. His property lies on both sides of the Illinois River and abuts the River. Mr. Timmons' family has had a ranch there since 1942. Mr. Timmons has a budget for fertilizer and would rather spend that budget on poultry litter. He finds litter more economical than commercial fertilizer – it gives him more "bang for the buck." It is longer lasting and better for the land because it makes the soil softer, loamier, while commercial fertilizer tends to pack the soil. Mr. Timmons has observed over the years that before the poultry industry grew up in his area, the country was full of people who could not make a living. Poultry production provides jobs. Mr. Timmons considers poultry litter a valuable by-product of the poultry industry. Farmers and ranchers have used the litter to make the rocky areas into better soil, and Mr. Timmons believes that the better soil is the driving force for the growth of the cattle industry in eastern Oklahoma.

"In 1942 my grandpa bought part of the land that I ranch on. . . I am hoping that my grandsons will be able to make this a 'century ranch.'"

While Mr. Timmons believes he could hold onto his ranch if the application of litter is banned, the end result would be that he would have to cut back on the number of cattle that his property could support with the resulting reduction of net income. He has found that the margin for making a living out of farming and ranching is narrow. "Young people cannot afford to buy the land that they need to start a farm or ranch and support themselves from it."

ERNEST DOYLE (See Ex. 6)

At age 52 Ernest Doyle believes he is the youngest grower for Cargill. Mr. Doyle raises turkeys and hay on 160 acres near Westville, Oklahoma. He sells the litter to Certified Poultry Waste Applicators. When Mr. Doyle started in the poultry business in 1979, he started with a

debt that would equal \$650,000 by today's standards. He has five more years until his business is paid for, and he is hoping to be able to survive for a little longer than that to save something for retirement. Mr. Doyle observed the regulation of farming increase over the years. He complies with all the regulations, but believes there is less and less incentive to be a farmer . . .

"what with difficulty finding people to employ, increased numbers of regulations and ever increasing fuel prices. It is really a mental strain to now have the Attorney General breathing down the neck of farmers like me."

Mr. Doyle has seen the benefits of using poultry litter to enrich the land and grow better and thicker grass. If poultry litter has to be hauled out of the watershed, the transportation costs would render it cost-prohibitive to use. If it is designated a solid waste and Mr. Doyle is required to pay to dispose of it, it would be so costly that he could not stay in business.

"The Attorney General's injunction against land application of poultry litter in the Illinois River Watershed would be the last straw to putting me out of business."

JERRY LONDOGIN (See Ex. 7)

Jerry Londogin is a 59 year old Viet Nam veteran whose family has been in cattle ranching all his life. He raises cattle and hay on 144 acres that he owns and 300 acres that he leases. Mr. Londogin works part-time as a Certified Commercial Poultry Waste Applicator. Oklahoma's laws, administered and enforced by state agencies, govern the application of poultry litter. The Oklahoma Department of Agriculture administers and enforces the provisions of the Oklahoma Poultry Waste Applicators Certification Act. They ensure that the standards for the application of litter using the procedures are met and that best management practices that are provided in the Act are used. As a Certified Commercial Poultry Waste Applicator, Mr. Londogin has educational and paperwork requirements under the Act. He must take three hours of continuing education annually and must submit an Annual Report each year that provides information about the litter he spread during the previous year. If litter is applied on land owned

by a registered poultry operation, then the application must follow the operation's Animal Waste Management Plan. Mr. Londogin has worked with poultry litter and other animal manures for many years and neither he nor his family has ever gotten sick from working with litter or other manure. He is not aware of anyone who has ever gotten sick from working with litter or other manure. If the application of litter is banned, Mr. Londogin could not purchase only commercial fertilizers and still afford to keep his leased pasture because he would lose money just raising hay. The yield that he gets on his hay would decrease while the wear and tear on his equipment and resulting repair costs would increase.

"The increase in costs that would occur if I could not use poultry litter in my cattle operations would be more than just a hardship for me, it would be financially devastating."

ROB HARRISON (See Ex. 8)

Rob Harrison, along with his father and his son, operates a dairy farm on 75 acres that he owns and about 100 to 150 acres that he leases. He usually has 100 head of "mama cows," 70 to 80 of them milking at any given time. Mr. Harrison uses poultry litter as fertilizer on his farm to raise much of the hay that he feeds his dairy herd. He does not believe he would get half the yield using commercial fertilizer. If the Attorney General is successful in banning application of litter, Mr. Harrison would have to resort to more expensive commercial fertilizers.

"What it really boils down to for me is whether or not my dairy farm can be self-sustaining. If I have to rely on commercial products I would not be able to survive as a dairy farmer. . . . If our dairy farm is not self-sustaining, then my son's future does not include this family dairy farm. In my opinion that is a very high cost."

CONCLUSION

The legal deficiencies in the plaintiffs' motion are ably set out in other briefs, but the overarching deficiency is that reengineering of already highly regulated agriculture should not be sought in court. The task of balancing the needs of tourism, agriculture, the state's regulatory design, and the public's right to participate in the formulation of its laws is one that should be left to the branches of government better equipped to make broad policy choices, not cast aside by resort to the requested preliminary injunction. Another United States Court eloquently phrased its reluctance to embark on a process of reengineering society by lawsuit:

"Plaintiffs have lost their way; they need to consult a map or a compass or a Constitution because Plaintiffs have come to the judicial branch for relief that may only be granted by the legislative branch." *Kolari v. New York Presbyterian Hospital*, 382 F.Supp.2d 562, 565-66 (S.D. N.Y. 2005).

The context here is different, but the outcome shouldn't be. Plaintiffs' Motion for Injunction must be denied.

Respectfully submitted,

s/ LeAnne Burnett

RICHARD C. FORD, OBA #3028
LeANNE BURNETT, OBA #13666
CROWE & DUNLEVY
A Professional Corporation
20 North Broadway, Suite 1800
Oklahoma City, OK 73102-8273
(405) 235-7700
(405) 239-6651 (Facsimile)
leanne.burnett@crowedunlevy.com

ATTORNEYS FOR OKLAHOMA FARM
BUREAU, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of February, 2008, I electronically transmitted to the Court Clerk using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

W.A. Drew Edmondson	Jonathan D. Orent
Kelly Hunter Burch	Lawrence W. Zeringue
J. Trevor Hammons	Stephen L. Jantzen
Tina L. Izadi	J. Randall Miller
Daniel P. Lennington	Michael G. Rousseau
Erin W. Thompson	David C. Senger
Richard T. Garren	Patrick M. Ryan
William H. Narwold	Louis W. Bullock
Sherry P. Bartley	Fidelma L. Fitzpatrick
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Sharon K. Weaver	Paula M. Buchwald
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Mark D. Hopson	E. Stephen Williams
Robert A. Nance	Robert W. George
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Nicole Longwell	Ingrid L. Moll
Michael R. Bond	Robert P. Redemann
Melvin D. Riggs	Timothy K. Webster
Lee M. Heath	Joseph P. Lennart
Philip D. Hixon	

I hereby certify that on this 15th day of February, 2008 I served the same document via U.S. Postal Service on the following, who are not registered participants of the ECF system:

C. Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 N. Classen
Oklahoma City, OK 73118

s/LeAnne Burnett

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

STATE OF OKLAHOMA, ex rel. W.A.)
DREW EDMONDSON, in his capacity as)
ATTORNEY GENERAL OF THE STATE)
OF OKLAHOMA AND OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT, in his capacity as the)
TRUSTEE FOR THE NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)

Plaintiff,

v.

Case No. 05-CV-00329 GKF-SAJ

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

Defendant.

AFFIDAVIT OF BETTY ANDERSON

STATE OF OKLAHOMA)
) SS.
COUNTY OF CHEROKEE)

Betty Anderson, of lawful age, being first duly sworn, deposes and states as follows:

1. My name is Betty Anderson. My husband, Bill, and I raise cattle, chickens and hay. Our address is in Colcord, Oklahoma.
2. I make this affidavit in support of the amicus brief to be filed by Oklahoma Farm Bureau opposing the Attorney General's request for

an injunction. Everything in this affidavit is true and correct to the best of my information and belief.

3. We live in Delaware County. We have been in the poultry business for 21 years, and we have raised cattle beginning many years before that.
4. I am a member of the Oklahoma Farm Bureau.
5. We have four pullet houses and two breeder houses, and we raise cattle and hay on 557 acres that we own on three parcels in Delaware County. Two of the parcels are used for raising poultry, two are used for growing hay, and all three are used for cattle.
6. We built the first poultry house over twenty years ago to get the litter it would produce so that we could use it as fertilizer on the pastures that produce the hay to feed our cattle. We raise chickens for Cobb-Vantress. Using litter from our poultry operations has allowed us to create good grassland to be able to raise cattle where we had not been able to do so before. We run about 250 mama cows.
7. If the Attorney General is successful in getting the injunction and land application of litter is banned in the Illinois River watershed, then we would have to cut back on our cattle by at least one half. Given the price of urea, we could not afford to use urea or other commercial fertilizer on our grassland. It would not be cost-effective, and we would not make any money.
8. We found that poultry litter is good for the soil and took our fields from sage brush to hay pastures. It has happened all through this area. We used to drive to Siloam Springs and count the number of cattle on one hand, now you see many more pastures and lots of cattle grazing. Without fertilizer, the sage grass would return like it was before, and the land would not support the cattle.
9. Any finding that chicken litter is solid waste would completely shut down our poultry producing efforts. We could not afford to have to pay to have the chicken litter put in a landfill or otherwise disposed of like solid waste, while at the same time losing the benefits of using the litter as fertilizer, either on our own farm or selling it to others for their use.

10. We have been drinking our well water for more than sixty years. No one has gotten sick from drinking the water from wells that are on land on which litter has been applied.
11. When the Attorney General sent his people out to our farm to do soil samples, they wore the white hazmat suits to take the soil samples. Yet over the last twenty-one years no one in our family has gotten sick from working with or being around litter.

Dated this ____ day of February, 2008.

Betty Anderson
Betty Anderson

Subscribed and sworn to before me this 2 day of February, 2008.

David J. Shan
Notary Public 02001569

My Commission Expires:

2. 17. 10

[SEAL]

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

STATE OF OKLAHOMA, ex rel. W.A.)
DREW EDMONDSON, in his capacity as)
ATTORNEY GENERAL OF THE STATE)
OF OKLAHOMA AND OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT, in his capacity as the)
TRUSTEE FOR THE NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)
))
Plaintiff,)

v.)

Case No. 05-CV-00329 GKF-SAJ

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

AFFIDAVIT OF JOHNNY CARLILE

STATE OF OKLAHOMA)
)) SS.
COUNTY OF CHEROKEE)

Johnny Carlile, of lawful age, being first duly sworn, deposes and states as follows:

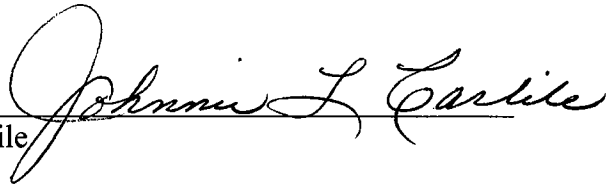
1. My name is Johnny Carlile. I raise cattle and hay. My address is in Tahlequah, Oklahoma.
2. I make this affidavit in support of the amicus brief to be filed by Oklahoma Farm Bureau opposing the Attorney General's request for

an injunction. Everything in this affidavit is true and correct to the best of my information and belief.

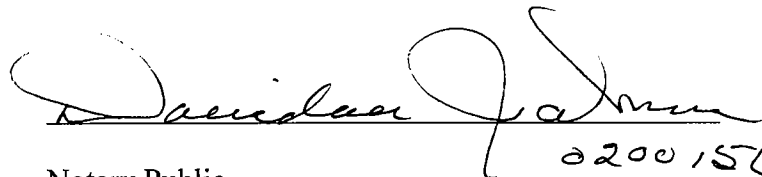
3. My ranch is approximately 600 to 700 acres. My grandson will be the seventh generation to farm in Cherokee County. I have been a cattle rancher all my life. I raise cow/calf units and have between 100 to 150 head. I raise hay to feed them.
4. I am a member of the Oklahoma Farm Bureau.
5. I use poultry litter as fertilizer on my ranch when I can get it. Some of the guys providing litter to me went out of business, and I've had a hard time getting it at the right time of the year. It is an excellent source of nutrients for forage production.
6. For rough ground poultry litter will grow grass where commercial fertilizer will not. It will do the same on good ground, too. It puts organic matter into the ground and loosens the soil. It releases periodically with the rains, and one application in a year is all it takes. Commercial fertilizer is gone in about one thirty-day spurt, has to be reapplied, and tends to tighten up the ground. Poultry litter does more for the soil than anything I know of.
7. I cannot put down commercial fertilizer because of the cost. It was \$400 a ton in 2007. This year it is going for about \$600 a ton. The cost for the poultry litter with application is about \$50 an acre while the cost to use comparable commercial fertilizer is about \$120 an acre.
8. I try to get 4 bales of hay to the acre. I would have to get 8 bales to the acre to make it worth using commercial fertilizer at the current price. I cut hay once a year then use the field as pasture. If I can get litter, I can afford to put it out. If I can't get poultry litter, I'll have to bale without fertilizer. That produces less hay and it's more costly to run equipment. At \$600 a ton for commercial fertilizer, the cost would be roughly \$40 to \$50 per bale – too high to be worth fertilizing.
9. If the injunction is granted, and I could not use poultry litter, I don't know quite what I'd do. I would probably bale hay without using any fertilizer. I don't like doing that because I like to put back into the ground what growing the grass takes out of it. My grandson is the

seventh generation to live in the county. If I don't take care of the land that is my business, it won't take care of itself.

Dated this 2 day of February, 2008.


Johnnie L. Carlile

Subscribed and sworn to before me this 2 day of February, 2008.


Notary Public 02001569

My Commission Expires:

2-17-10

[SEAL]

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

STATE OF OKLAHOMA, ex rel. W.A.)
DREW EDMONDSON, in his capacity as)
ATTORNEY GENERAL OF THE STATE)
OF OKLAHOMA AND OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT, in his capacity as the)
TRUSTEE FOR THE NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)
))
Plaintiff,)

v.)

Case No. 05-CV-00329 GKF-SAJ

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

AFFIDAVIT OF JERRY HARE

STATE OF OKLAHOMA)
)) SS.
COUNTY OF CHEROKEE)

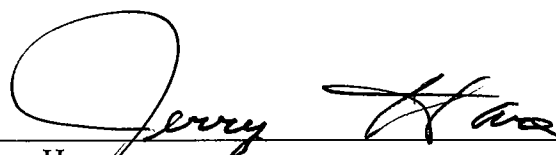
Jerry Hare, of lawful age, being first duly sworn, deposes and states as follows:

1. My name is Jerry Hare. I am a cattle rancher. My address is in Tahlequah, Oklahoma.
2. I make this affidavit in support of the amicus brief to be filed by Oklahoma Farm Bureau opposing the Attorney General's request for

an injunction. Everything in this affidavit is true and correct to the best of my information and belief.

3. I live in Cherokee County. My family has been in the cattle ranching business for about 40 years.
4. I am a member of the Oklahoma Farm Bureau.
5. I run cow/calf units, and have ranched since 1968. I am a member of the Cherokee Tribe. My ranch is approximately 520 deeded acres. I cut hay off another 150 acres.
6. I have used poultry litter as fertilizer on my property on and off through the years based on my need to grow more hay. Poultry litter is an excellent fertilizer for hay and forage production. Poultry litter costs less than commercial fertilizer.
7. Litter is neither a discarded material nor a waste to me. I consider it valuable to my ranching operations.
8. Poultry litter lasts longer than commercial fertilizer. I rotate poultry litter with commercial fertilizer when I can afford the commercial fertilizer. Both the soil and the litter are tested before litter is applied to my land. I try to pair up the nutrient need in my soil with the nutrients in the litter.
9. I can see the long lasting beneficial effect of the poultry litter on the second and third hay cuttings when I cut hay that often.
10. I live on Barron Fork, which is a jewel. My grandchildren swim there. No one has gotten sick from swimming in the creek or from being around fields on which litter has been applied. I am careful to take care of my land for future generations.
11. If I could not use litter, it would definitely impact my operations. I would not be able to raise as much hay. I would have to cut back on the number of cattle I run. I would cut back to whatever the land could support without applying litter or commercial fertilizer.
12. I wish there was someone objective to tell me if there really is a problem in the Illinois River Watershed. I would quit using poultry litter if I knew it was really a problem.

Dated this 2 day of February, 2008.



Jerry Hare

Subscribed and sworn to before me this 2 day of February, 2008.



Notary Public 82001569

My Commission Expires:

2-12-10

[SEAL]

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

STATE OF OKLAHOMA, ex rel. W.A.)
DREW EDMONDSON, in his capacity as)
ATTORNEY GENERAL OF THE STATE)
OF OKLAHOMA AND OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT, in his capacity as the)
TRUSTEE FOR THE NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)
))
Plaintiff,)

v.)

Case No. 05-CV-00329 GKF-SAJ

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

AFFIDAVIT OF GENE COLBURN

STATE OF OKLAHOMA)
)) SS.
COUNTY OF CHEROKEE)

Gene Colburn, of lawful age, being first duly sworn, deposes and states as follows:

1. My name is Gene Colburn. I am a cattle rancher. My address is in Proctor, Oklahoma.
2. I make this affidavit in support of the amicus brief to be filed by Oklahoma Farm Bureau opposing the Attorney General's request for

an injunction. Everything in this affidavit is true and correct to the best of my information and belief.

3. I live in Cherokee County. I will be 81 years old in April. I have been in the cattle ranching business for about 70 years.
4. I am a member of the Oklahoma Farm Bureau.
5. I run cow/calf units and bale hay. My ranch is approximately 710 acres.
6. I use poultry litter as fertilizer on my ranch when I can get it. It is better than commercial fertilizer and it is cheaper. I pay about \$30 an acre for litter and litter application and between \$60 and \$100 an acre for commercial fertilizer.
7. When I purchase litter for my hay meadows and pastures I get it from a Certified Poultry Waste Applicator. The spreaders won't put on any more litter than is allowed by law.
8. I take and test soil samples. The test tells me how much litter I can apply.
9. I have never gotten sick from being around poultry litter.
10. My water well is only 18 feet deep. It is like spring water and tastes really good. No one has ever gotten sick from drinking my well water.
11. I do not believe that poultry litter is a waste. It is fertilizer and there are good uses for it. It would be a waste if it wasn't used.
12. If I could not use litter as a fertilizer and to help the soil, it would negatively impact my operations. I would not be able to raise as much hay. By comparison, I would have to do commercial fertilizer twice a year. Commercial fertilizer is expensive and doesn't do the job that litter does since commercial fertilizer is so short lasting. Therefore, I would have to do without fertilizer and cut back on the number of cattle I run.

Dated this 2 day of February, 2008.


Gene Colburn

Subscribed and sworn to before me this 2 day of February, 2008.


Notary Public 02001569

My Commission Expires:

2-17-10

[SEAL]

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

STATE OF OKLAHOMA, ex rel. W.A.)
DREW EDMONDSON, in his capacity as)
ATTORNEY GENERAL OF THE STATE)
OF OKLAHOMA AND OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT, in his capacity as the)
TRUSTEE FOR THE NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)
))
Plaintiff,)

v.)

Case No. 05-CV-00329 GKF-SAJ

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

AFFIDAVIT OF RON TIMMONS

STATE OF OKLAHOMA)
)) SS.
COUNTY OF CHEROKEE)

Ron Timmons, of lawful age, being first duly sworn, deposes and states as follows:

1. My name is Ron Timmons. I am a cattle rancher. My address is in Tahlequah, Oklahoma.
2. I make this affidavit in support of the amicus brief to be filed by Oklahoma Farm Bureau opposing the Attorney General's request for

an injunction. Everything in this affidavit is true and correct to the best of my information and belief.

3. I live in Cherokee County. We call our ranch the Bar T Bar.
4. I am a member of the Oklahoma Farm Bureau.
5. I own 500 acres and lease 380 acres. I'm in the process of purchasing 300 acres which I am leasing. So, I raise cattle and hay on 880 acres. Part of the property I lease is on both sides of the Illinois River and abuts the River. The property I own drains into the Barron Fork Creek. My family has had a ranch here since 1942.
6. I do not raise poultry, but I use poultry litter as fertilizer on my property when I can get it. My budget for fertilizer is between \$10,000 and \$12,000 annually. I would rather spend my fertilizer budget on litter.
7. Poultry litter is more economical than commercial fertilizer. I can put commercial fertilizer on and get about a 90 day benefit. I believe that poultry litter is better for the land. It makes the soil softer, loamier, while commercial fertilizer tends to pack the soil. Plus it's more "bang for the buck."
8. I get more use out of poultry litter because I get about 60% of the value this year and about 40% of the value next year.
9. I have a dug well that is twenty-two feet deep. My eighty-three year old mom has been drinking from that well for a long time. The water is delicious. No one has ever gotten sick from drinking from that well even though it is near property that has been fertilized with poultry litter.
10. My observation is that before the poultry industry grew up in this area, this country was full of poor people, people who could not make a living. The poultry industry has built this area of Oklahoma and Arkansas. The poultry industry with the poultry production itself provides jobs and so forth. Farmers and ranchers have used the litter to make the rocky areas into better soil. I believe the better soil is the driving force for the growth of the cattle industry in this part of the country. Because the soil is richer, cattle ranchers like me can grow more hay and sustain more cattle per acre.

11. What you see in this area now is better and bigger houses, better fences, jobs, feed suppliers, and more cattle in the fields.
12. I consider poultry litter a valuable by-product of the poultry industry.
13. If the application of poultry litter is banned in the Illinois River Watershed, I would not be able to raise as much hay. I could use commercial fertilizer for a year or two, but I would end up with hard ground and less yield. The end result would be that I would have to cut back on the number of cattle that my property can support. That would reduce my net income. I imagine I could stay in business since I own my land, but I might have to change what I grow.
14. I am hopeful to be able to hold onto this ranch. The next generation of farmers has to come from family ranches like mine. The margin for making a living out of farming and ranching is narrow. Young people cannot afford to buy the land that they need to start a farm or ranch and support themselves from it.
15. In 1942 my grandpa bought part of the land that I ranch on. I bought the rest in 1988. I am hoping that my grandsons will be able to make this a "century ranch."

Dated this 2 day of February, 2008.

Ronald H. Timmons
Ron Timmons

Subscribed and sworn to before me this 2 day of February, 2008.

David J. Shaw
Notary Public 02001569

My Commission Expires:

2 - 17 - 10
[SEAL]

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

STATE OF OKLAHOMA, ex rel. W.A.)
DREW EDMONDSON, in his capacity as)
ATTORNEY GENERAL OF THE STATE)
OF OKLAHOMA AND OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT, in his capacity as the)
TRUSTEE FOR THE NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)
))
Plaintiff,)

v.)

Case No. 05-CV-00329 GKF-SAJ

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

AFFIDAVIT OF ERNEST DOYLE

STATE OF OKLAHOMA)
)) SS.
COUNTY OF CHEROKEE)

Ernest Doyle, of lawful age, being first duly sworn, deposes and states as follows:

1. My name is Ernest Doyle. I raise turkeys for Cargill on 160 Acres near Westville. I also raise hay. My address is in Stilwell, Oklahoma.
2. I make this affidavit in support of the amicus brief to be filed by Oklahoma Farm Bureau opposing the Attorney General's request for

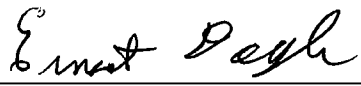
an injunction. Everything in this affidavit is true and correct to the best of my information and belief.

3. I live in Adair County. I am 52 years old this month, and I have been a farmer all my life. I have raised poultry since 1979 when I began with four poultry houses.
4. I am a member of the Oklahoma Farm Bureau.
5. I raise 20,900 poults at a time. I raise the turkeys in houses I put a layer of wood shavings, rice hulls or peanut hulls on the floor of the houses. The birds live on this bedding. Their excrement gets mixed with the bedding, and this mixture is what is known as poultry litter.
6. I clean out my own poultry houses and I sell the litter. It sells for approximately \$9 to \$10 per ton. I sell the litter to farmers or to Certified Poultry Waste Applicators who haul and spread the litter. They all have the proper certifications.
7. I cannot use my litter on my own property based on my Nutrient Management Plan, so I have to purchase commercial fertilizer. Last summer I sold my litter for about \$4,000, and I purchased commercial fertilizer at about \$1,300 for one buggy, at 3½ tons per buggy. I purchased three buggy loads, so I came out about even. I like to cut hay every three to four weeks, so I need to fertilize three times in a season. So, selling my litter only raised enough money to purchase ammonium nitrate to fertilize one time last year.
8. I consider litter a very valuable commodity. Application of litter will build up a rock pile farm to where it will grow pasture and hay. I can see the difference between fields where my litter has been applied to my neighbor's fields and those fields fertilized with commercial fertilizer on my land. The grass just grows better, thicker and faster where litter has been applied.
9. When you move from litter to commercial fertilizer the grass starts deteriorating and the roots and ecosystem go downhill. The nutrients in litter stay in place because of the bedding material. If you put down commercial fertilizer, you need a good stand of grass to keep the commercial fertilizer in place. The stability of the soil will wither away if only commercial fertilizer is used. With commercial fertilizer the soil is not sustained, and it tightens. That leads to erosion and

consequently more pollution. When you fertilize where land can't take it because of lack of organic matter, it's like an infertile womb.

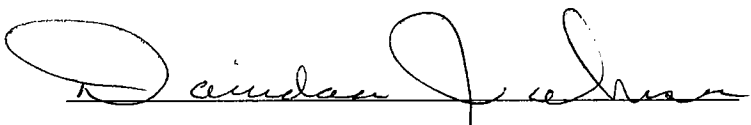
10. I and my family have used spring fed water for drinking for years. No one has gotten sick from drinking the water or from being around and working with poultry litter.
11. Over the years regulation of farming has increased. I comply with all regulations. There is less and less incentive to be a farmer what with difficulty finding people to employ, increased numbers of regulations and ever increasing fuel prices. It is really a mental strain to now have the Attorney General breathing down the neck of farmers like me.
12. I believe I am the youngest grower for Cargill. Young people are not coming into farming. My daughter was killed and my son does not want to be in this business. There is no incentive
13. When I started in this business, I started with debt that would equal \$650,000 by today's standards. I have five more years until my business is paid for, and my hope is to be able to survive for that period of time and maybe work a while longer to save a little before I retire.
14. The Attorney General's injunction against land application of poultry litter in the Illinois River Watershed would be the last straw to putting me out of business. If we have to have the litter hauled out of the watershed, the distance it has to go before it can be applied would render it cost-prohibitive to use. If it is designated a solid waste and I had to pay to put it somewhere like a landfill, it would be even more costly and I could not afford to stay in business.

Dated this ____ day of February, 2008.



Ernest Doyle

Subscribed and sworn to before me this 2 day of February, 2008.



Notary Public 02001569

My Commission Expires:

2-17-10
[SEAL]

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

STATE OF OKLAHOMA, ex rel. W.A.)
DREW EDMONDSON, in his capacity as)
ATTORNEY GENERAL OF THE STATE)
OF OKLAHOMA AND OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT, in his capacity as the)
TRUSTEE FOR THE NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)

Plaintiff,

v.

Case No. 05-CV-00329 GKF-SAJ

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

Defendant.

AFFIDAVIT OF JERRY LONDOGIN

STATE OF OKLAHOMA)
) SS.
COUNTY OF CHEROKEE)

Jerry Londogin, of lawful age, being first duly sworn, deposes and states as follows:

1. My name is Jerry Londogin. I am a cattle rancher and I am a Certified Commercial Poultry Waste Applicator. My address is in Colcord, Oklahoma.

2. I make this affidavit in support of the amicus brief to be filed by Oklahoma Farm Bureau opposing the Attorney General's request for an injunction. Everything in this affidavit is true and correct to the best of my information and belief.
3. I live in Delaware County about three miles from where I was born and raised. I am a Viet Nam veteran. I will be sixty years old in May. My family has been in the cattle ranching business for 59 years.
4. I am a member of the Oklahoma Farm Bureau.
5. I raise cattle and hay on 144 acres that I own and 300 acres that I lease. I do not raise poultry.
6. I use poultry litter as fertilizer on my property because it is an excellent and cost competitive source of nutrients for hay and forage production. Poultry litter costs from \$25 to \$50 a ton while commercial fertilizer, depending upon the market, can run about \$500 to \$600 a ton.
7. Poultry litter is also good for my soil because it contains organic material, which improves the water retention of the soil and it encourages earthworms which improves the nature of the soil itself. It provides humus that works to transform rocky ground into productive ground. Poultry litter also increases soil pH. Laying house litter, which is high in Calcium, is good to apply where you need lime in your soil.
8. Litter is also good for my land because it acts as a slow-release fertilizer, whereas commercial fertilizer does not. It is my experience that I can graze one cow per 2 acres if I use litter, but only one cow per every 5 to 6 Acres if I do not use litter. It is also my experience that if I use litter one year, its benefits carry over into the next year.
9. In Oklahoma there are laws governing the application of poultry litter. The state administers these laws. Oklahoma requires that litter be applied to my land by a certified litter applicator. I always comply with the state's rules on applying poultry litter to my own property. With the use of soil samples and litter analysis, the state tells me how much poultry litter can be applied on each field. I follow the state's requirements.

10. I work part-time as a Certified Commercial Poultry Waste Applicator. The Oklahoma Department of Agriculture administers and enforces the provisions of the Oklahoma Poultry Waste Applicators Certification Act. They ensure that the standards for the application of litter using the procedures are met and that best management practices that are provided in the Act are used. As a Certified Commercial Poultry Waste Applicator, I have educational and paperwork requirements under the Act. I have to take three hours of continuing education annually and I have to submit an Annual Report each year that provides information about the litter I spread during the previous year.
11. If litter is applied on land owned by a registered poultry operation, then the application must follow the Animal Waste Management Plan.
12. I have a well that I and my family use for drinking water and other household purposes. I have applied litter on the property where my well is. I also park my spreading equipment in the vicinity of the well. My wife had a day care for the Cherokee Nation for a long time, and she was required to have the well tested periodically. It always tested good. We have not had any problem with the well water, and we have not had any problem with fecal bacteria in the well water.
13. I have worked with poultry litter and other animal manures for many years, and have never gotten sick from poultry litter or other animal manure. My family has never gotten sick from working with litter or other manure. I'm not aware of anyone who has ever gotten sick from working with litter or other manure.
14. I do not consider poultry litter to be a discarded material, nor do I consider it to be a "waste." Litter is an organic, all natural fertilizer and soil amendment. It is worth money and is valuable. Even if someone cannot use the litter he produces on his own property, it is still valuable because he can sell the litter for enough to be able to purchase the bedding to put back in his poultry house.
15. I purchase the litter I apply to my pastures and fields. All the property that I lease is in the Illinois River Watershed. If I could not use the litter on that property, it would be financially devastating to me. I could not purchase only commercial fertilizers and still afford to keep

the leased pasture because I would lose money on it. I would need to cut two-thirds of the cattle that I run on the leased pasture.

16. If I could not use litter, I would not be able to raise as much hay. If I could afford it, I could use commercial fertilizer for a year or two, but I would end up with hard ground and less yield. Commercial fertilizer has to be applied more frequently because its effects only last a short time compared to litter, and it is my experience that commercial fertilizer kills the earthworms.
17. Using commercial fertilizer rather than litter would also increase the wear and tear on my equipment, increasing repair costs. With the less productive yield, the equipment has to go around three or four times to get the same amount of hay, with the resulting impact on my equipment. Additionally, running my equipment longer requires an increased amount of fuel that I would have to purchase. The cost of fuel has dramatically increased in the last year or two.
18. The increase in costs that would occur if I could not use poultry litter in my cattle operations would be more than just a hardship for me, it would be financially devastating.

Dated this 2nd day of February, 2008.

Gerry Londogin
Gerald Londogin
JERRY

Subscribed and sworn to before me this 2 day of February, 2008.

David J. [Signature]
Notary Public 02001569

My Commission Expires:

2-17-10

[SEAL]

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

STATE OF OKLAHOMA, ex rel. W.A.)
DREW EDMONDSON, in his capacity as)
ATTORNEY GENERAL OF THE STATE)
OF OKLAHOMA AND OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT, in his capacity as the)
TRUSTEE FOR THE NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)
))
Plaintiff,)

v.)

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INC., PETERSON FARMS, INC.,)
SIMMONS FOODS, INC., and WILLOW)
BROOK FOODS, INC.,)
))
Defendant.)

AFFIDAVIT OF ROBERT HARRISON

STATE OF OKLAHOMA)
)) SS.
COUNTY OF CHEROKEE)

Robert Harrison, of lawful age, being first duly sworn, deposes and states as follows:

1. My name is Robert "Rob" Harrison. I am a dairy farmer. My address is in Watts, OK. I make this affidavit in support of the amicus brief to be filed by Oklahoma Farm Bureau in this case. Everything in this affidavit is true and correct to the best of my information and belief.

2. I am a member of the Oklahoma Farm Bureau.
3. My father, my son and I operate my dairy farm. My farm is approximately 75 acres that I own in Delaware County, and about 100 to 150 acres that I lease.
4. On the land in Delaware County I try to run approximately 100 head of "mama cows" all the time, and usually have between 70 and 80 milking. I raise all the steers and heifers on the 75 acre dairy farm. I get by with running 1 to 2 cows per acre because they are dairy cows, and I do additional feeding in the dairy barn.
5. I do not raise poultry, but I do use poultry litter as fertilizer on my farm. On the leased property I raise much of the hay that I feed. I feed around 1000 round bales a year. If I had to rely solely on commercial fertilizer, I could not do half of what I am doing on my dairy farm.
5. Poultry litter is good for the soil because it contains organic material, which improves the water retention of the soil and helps aerate the soil. I believe it restores nutrients to the soil in a natural way. Litter acts as a fertilizer over a longer period of time than commercial fertilizer. I purchase the litter that I apply to my pastures.
6. Commercial fertilizer needs reapplication within a short time. Commercial fertilizer is much more costly than poultry litter. Commercial fertilizer does not provide the other organic matter that litter provides. When only commercial fertilizer is used, the ground tends to harden-up.
6. The State of Oklahoma requires that litter be applied to my land by a certified litter applicator. Therefore, I became a certified private litter applicator. I either contract with a commercial litter applicator, or I apply the litter myself.
7. If the Attorney General is successful in getting an injunction banning all land application of litter in the Illinois River Watershed, I would have to use more expensive commercial fertilizers. What it really boils down to for me is whether or not my dairy farm can be self-sustaining. If I have to rely on commercial products I would not be able to survive as a dairy farmer. Because of my back injury, it is

difficult for me to get employment. That's why I have my own business.

8. The cost of the commercial fertilizer is not the only cost involved if I could not use poultry litter on my farm. The pastures do not grow as well on commercial fertilizer, ultimately reducing the amount of hay they produce. This means that I and my equipment have to work harder to get less, use up my equipment faster, and incur higher fuel bills.
9. My son is sixteen years old. He has already said that his goal in life is to work with me in dairy farming -- not just now, but as a career. If our dairy farm is not self-sustaining, then my son's future does not include this family dairy farm. In my opinion that is a very high cost.

Dated this ____ day of February, 2008.

Robert Harrison
Robert Harrison

Subscribed and sworn to before me this 2 day of February, 2008.

David J. Adams
Notary Public
02001569

My Commission Expires:

2-17-10

[SEAL]

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

STATE OF OKLAHOMA, ex rel. W.A.)
DREW EDMONDSON, in his capacity as)
ATTORNEY GENERAL OF THE STATE)
OF OKLAHOMA AND OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT, in his capacity as the)
TRUSTEE FOR THE NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)
))
Plaintiff,)

v.)

Case No. 05-CV-00329 GKF-SAJ

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

AFFIDAVIT OF MIKE DICKS

STATE OF OKLAHOMA)
)) SS.
COUNTY OF PAYNE)

Mike Dicks, of lawful age, being first duly sworn, deposes and states as follows:

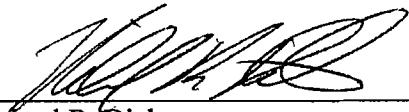
1. My name is Mike Dicks. I am a professor at Oklahoma State University. My address is in Stillwater, Oklahoma.
2. Everything in this affidavit is true and correct to the best of my information and belief.

3. I live in Payne County. I have a PhD in Agricultural Economics from the University of Missouri at Columbia. In my current position as a professor in the Agriculture Economics Department at Oklahoma State University, my duties include responsibility for teaching (37%), research (38%), and extension (25%) in agricultural policy. Related areas of my research include rural development, natural resource use, international (trade, development, commodity) policy, and macroeconomics links to agriculture.
4. Along with Dr. Gordon Rausser, I have provided a Declaration in Opposition to the Plaintiff's Motion for Preliminary Injunction on behalf of the Defendants. The information provided in this affidavit is from research gathered for that Declaration, but not specifically included in the Declaration.
5. I created the attached chart. The chart reflects the numbers I describe in paragraphs 6, 7, 8 and 9 herein.
6. Using the Plaintiff's figure of 347,000 tons of poultry litter being generated annually in the Illinois River Watershed (Plaintiff's Exhibit 13, page 3), the cost of that amount of poultry litter generated in and applied in the Illinois River Watershed is \$6,551,360. That value of poultry litter is based upon \$18.88 per ton, which includes the price of litter, twenty-five miles of transport, required paperwork, and application.
7. I calculated the amount of nitrogen, phosphorus and potassium in 347,000 tons of poultry litter as 20,820,000 pounds of each.
8. To apply commercial fertilizer in an amount of nitrogen, phosphorus and potassium equivalent to that in poultry litter would have cost \$33,862,674 in January 2008. That cost of commercial fertilizer is based upon purchasing commercial fertilizer the first week of January 2008, from the Cimarron Valley Cooperative in Perkins, and includes transportation costs from the Port of Catoosa.
9. As of the date of this affidavit, February 14, 2008, to apply commercial fertilizer in an amount of nitrogen, phosphorus and potassium equivalent to that in poultry litter would cost \$36,661,304. That cost of commercial fertilizer is based upon purchasing commercial fertilizer on February 13, 2008, from the Cimarron Valley

Cooperative in Perkins, and includes transportation costs from the Port of Catoosa.

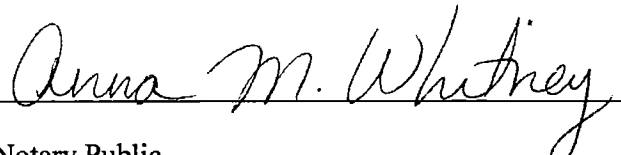
10. We have not measured the value of the poultry litter with regard to its organic matter, micronutrients, and any ability to increase pH in the soil. That value is above and beyond the value of poultry litter for the nutrients nitrogen, phosphorus and potassium. It is clear from the affidavits submitted by Oklahoma Farm Bureau members, that they consider those aspects of poultry litter to provide great value to soil building and retention, as well as forage production.

Dated this 14 day of February, 2008.



Michael R. Dicks

Subscribed and sworn to before me this 14 day of February, 2008.



Notary Public

My Commission Expires:

2/25/11

[SEAL]

State of Oklahoma
County of Payne



Replacement cost of nutrients (February 13, 2008)

Replace total tons	tons litter 347,000	lbs N 20,820,000	lbs P 20,820,000	lbs K 20,820,000	cost for N \$11,880,978	cost for P \$16,972,826	cost for K \$7,807,500	Total \$36,661,304
		\$6,551,360 cost of 347,000 tons of litter to supply on the field in the watershed						
		\$36,661,304 cost to supply NPK in chemical fertilizer equivalent to 347,000 tons of litter						

Replacement cost of nutrients (January 2008)

Replace total tons	tons litter 347,000	lbs N 20,820,000	lbs P 20,820,000	lbs K 20,820,000	cost for N \$11,880,978	cost for P \$15,388,696	cost for K \$6,593,000	Total \$33,862,674
		\$6,551,360 cost of 347,000 tons of litter to supply on the field in the watershed						
		\$33,862,674 cost to supply NPK in chemical fertilizer equivalent to 347,000 tons of litter						

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

STATE OF OKLAHOMA, ex rel. W.A.)
DREW EDMONDSON, in his capacity as)
ATTORNEY GENERAL OF THE STATE)
OF OKLAHOMA AND OKLAHOMA)
SECRETARY OF THE ENVIRONMENT)
C. MILES TOLBERT, in his capacity as the)
TRUSTEE FOR THE NATURAL)
RESOURCES FOR THE STATE OF)
OKLAHOMA,)

Plaintiff,)

v.)

Case No. 05-CV-00329 GKF-SAJ

TYSON FOODS, INC., TYSON)
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INC., COBB-VANTRESS, INC., CAL-)
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FARMS, INC., CARGILL, INC.,)
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GEORGE'S, INC., GEORGE'S FARMS,)
INC., PETERSON FARMS, INC.,)
SIMMONS FOODS, INC., and WILLOW)
BROOK FOODS, INC.,)

Defendant.)

AFFIDAVIT OF MARLA R. PEEK

STATE OF OKLAHOMA)
) SS.
COUNTY OF OKLAHOMA)

Marla R. Peek, of lawful age, being first duly sworn, deposes and states as follows:

1. My name is Marla R. Peek. I am Director of Regulatory Affairs for the Oklahoma Farm Bureau (OFB) and Director of the OFB Legal Foundation. My address is in Guthrie, OK.

2. I make this affidavit in support of the amicus brief to be filed by OFB opposing the Attorney General's request for an injunction. Everything in this affidavit is true and correct to the best of my information and belief.
3. OFB was incorporated as a non-profit organization in Oklahoma on March 4, 1942. It is a Section 501(c) (5) organization according to the provisions of the U.S. Internal Revenue Code. The primary purpose of the OFB is to promote the betterment of the conditions of those engaged in agricultural pursuits. OFB currently has about 168,000 member families.
4. The OFB Legal Foundation was created in 2001 by the OFB Board of Directors for the purpose of entering the legal arena to protect private property rights and production agriculture. The Foundation strives to serve farmers and ranchers through engaging in public interest litigation, researching legal issues affecting family farmers and rural Oklahomans, and educating farmers and ranchers and the public about issues important to agriculture.
5. The OFB has a uniform cooperative agreement with the 77 county Farm Bureaus in Oklahoma, as well as the American Farm Bureau Federation (AFBF), headquartered in Washington, D.C. Each county Farm Bureau is its own legal entity, as is the AFBF. The AFBF was created in 1919 and is the largest farm organization in the world, with more than 6.2 million member families. AFBF shapes agricultural, property rights, tax and trade policy at the national and international levels.
6. OFB is a grassroots policy-based organization. The organization's positions on issues originate at the county Farm Bureau level. They are then consolidated and refined by a state resolutions committee, and finally voted upon by the delegate body at the organization's annual meeting. OFB has a book of policy statements for the organization that are applicable from one annual convention until the next one. Annually, one-third of the policy book expires and must be re-instated to remain policy.
7. The OFB policy book, under "Purpose of Farm Bureau" states: "Farm Bureau is an independent, non-governmental voluntary organization of farm and ranch families united for the purpose of analyzing their problems and formulating action to achieve educational improvement,

economic opportunity and social advancement, and, thereby, to promote the national well-being. Farm Bureau is local, county, state, national, and international in its scope and influence and is non-partisan, non-sectarian and non-secret in character. Farm Bureau is the voice of agricultural producers at all levels.”

8. From my past experiences, I have learned many Oklahomans are only aware of Farm Bureau for its insurance sales. The insurance sales are actually from subsidiary companies of OFB, and were created as a “member service” to OFB members. OFB, as the non-profit general farm organization, addresses agricultural issues, not insurance issues.
9. OFB has a wide range of policy on issues relating to agriculture in the areas of property rights, governmental over-regulation, and taxation.
10. OFB has four state lobbyists, including me, who work on issues to inform lawmakers about agricultural policy, both state and national. As Director of Regulatory Affairs, my focus is on regulations and working with the agencies that implement the law.
11. Oklahoma has addressed water quality and animal waste issues through regulatory and non-regulatory mechanisms, including legislation, rulemakings (such as water quality standards), the federal-state 319 nonpoint source program, a state income tax incentive, and the USDA Natural Resources Conservation Service's (NRCS) conservation cost share programs. Oklahoma agriculture is also regulated by the Clean Water Act and other federal laws. OFB and AFBF have participated in and influenced all of the aforementioned mechanisms in which water quality and animal waste issues have been addressed, both at the state and national levels.
12. OFB participated in the legislative process when SB 1170, the Registered Poultry Feeding Operations Act was adopted. The idea that poultry litter and soil should be measured for their phosphorus content prior to application was a new concept.
13. OFB was pleased the Animal Waste Management Plan required in SB 1170 was tied to the Nutrient Management Standard developed by the Oklahoma USDA Natural Resources Conservation Service. It was important to the acceptance of these requirements that the standard was based upon science from an agency agricultural producers trusted. What

the Oklahoma NRCS Conservation Practice Standard for Nutrient Management (Exhibit 11 to the OFB brief) does is "manage the amount, source, placement, form and timing of the application of nutrients and soil amendments." The purposes of the Standard are to: "budget and supply nutrients for plant production; properly utilize manure or organic by-products as a plant nutrient source; minimize agricultural nonpoint source pollution of surface and ground water resources; protect air quality by reducing nitrogen emissions (ammonia and NO_x compounds) and the formation of atmospheric particulates; and maintain or improve the physical, chemical and biological condition of the soil."

14. Oklahoma was one of the first, if not the first state to require nutrient management plans using phosphorus, rather than nitrogen, as the limiting factor. Later, there was an initiative by the USDA-NRCS for every state to adopt its own phosphorus index. Thanks to participation by all segments of the agriculture industry, scientists, regulators and legislators, Oklahoma was ahead of the curve.
15. To provide the Court with a "real life" example of an Animal Waste Management Plan, I requested from the State of Oklahoma Department of Agriculture and received from the State of Oklahoma Department of Agriculture Betty and Bill Anderson's Animal Waste Management Plans. Betty's affidavit is Exhibit 1 and true and correct copies of those plans as I received them from the State are provided at Exhibit 12 to the Brief of Amicus Curiae Oklahoma Farm Bureau Inc. In Opposition to Plaintiffs' Motion for Preliminary Injunction.
16. It is clear to me that poultry producers have embraced the regulations promulgated pursuant to SB 1170. Poultry producers I know are knowledgeable about the regulations they are required to follow. SB 1170 requires annual continuing education for poultry growers, which helps inform producers of the latest scientific developments. OFB proudly points to the fact that our state's environmental regulations for poultry operations exceed federal environmental requirements.
17. OFB supports conservation. Our members serve on conservation district boards around the state. Our organization has consistently supported funding for cost-share for voluntary conservation best management practices. The landowner bears a portion of the costs to implement conservation measures on his property. Conservation practices don't just improve the land for the landowner, they have greater

public benefits. A few of those benefits are keeping the soil on the land, preventing flooding, and helping to filter rain water that makes its way back into our groundwater.

18. Agricultural producers beneficially using animal manure to fertilize and enhance the soil is an age-old practice. Limiting the application of animal manure to protect the environment is not. However, American agriculture producers are more knowledgeable and cognizant of how their actions affect the environment than ever before. I believe they respect the need for reasonable regulation. While agricultural producers understand the need to limit the use of animal manure to control nutrient application, they do not understand how their Attorney General can claim that poultry litter is a solid and/or hazardous waste. To agricultural producers today and historically, animal manure is a beneficial product to fertilize and enhance the soil. Our legislature and regulators have determined that animal manure is not a product that must be disposed of in a solid waste landfill or incinerated because it is hazardous to humans.
19. Last year, the entire agriculture community worked to pass SB 709. OFB and its members were instrumental in informing lawmakers of the issues when the legislature passed groundbreaking legislation that stated animal manure is not hazardous waste under state law. The legislation was passed in reaction to the Attorney General's 2005 lawsuit, this lawsuit, against the 14 poultry companies who have poultry growers in the Illinois River Watershed.
20. I have heard from members who are angry, frustrated, disappointed, and frightened because of the Attorney General's lawsuit against the poultry companies. They are saddened at his lack of support for production agriculture. Our members recognize the far-reaching implications if poultry litter were to be considered hazardous waste under federal law. It would be the beginning of the end of the livestock industry in the United States.

Dated this 15th day of February, 2008.

Marla R. Peek
Marla R. Peek

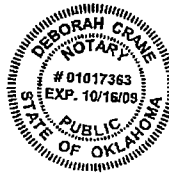
Subscribed and sworn to before me this 15 day of February, 2008.

Deborah Crane
Notary Public

My Commission Expires:

10-16-09

[SEAL]



**NATURAL RESOURCES CONSERVATION SERVICE
CONSERVATION PRACTICE STANDARD**

NUTRIENT MANAGEMENT

(Acre)

CODE 590

DEFINITION

Managing the amount, source, placement, form and timing of the application of nutrients and soil amendments.

PURPOSES

- ◆ To budget and supply nutrients for plant production.
- ◆ To properly utilize manure or organic by-products as a plant nutrient source.
- ◆ To minimize agricultural nonpoint source pollution of surface and ground water resources.
- ◆ To protect air quality by reducing nitrogen emissions (ammonia and NO_x compounds) and the formation of atmospheric particulates.
- ◆ To maintain or improve the physical, chemical and biological condition of soil.

CONDITIONS WHERE PRACTICE APPLIES

This practice applies to all lands where plant nutrients and soil amendments are applied.

CRITERIA

General Criteria Applicable to All Purposes

A nutrient budget for nitrogen (N), phosphorus (P), and potassium (K) shall be developed that considers all potential sources of nutrients including, but not limited to animal manure and organic by-products, waste water, inorganic/commercial fertilizer, crop residues, legume credits, and irrigation water.

Realistic yield goals shall be established using guidance outlined in **Oklahoma State University Extension (OSU) Fact Sheet F-2225, OSU Soil Test Interpretations**. A realistic yield goal is generally the average yield over the last 5 years plus 20%. Rates of nutrient application established by OSU will be the basis for nutrient recommendations.

For new crops or varieties, industry yield recommendations may be used until documented yield information is available.

Plans for nutrient management shall specify the form, source, amount, timing and method of application for each field to achieve realistic production goals and minimize the loss of nutrients to erosion, runoff, volatilization, and leaching.

Lime shall be applied, as needed, to adjust soil pH when below a crop's tolerance except as noted for the establishment of permanent grasses in **Tables 4 and 5**. Crop pH preferences are listed in **Table 5** and Liming requirements are listed in **Table 4**.

Plans for nutrient management that are elements of a more comprehensive conservation plan shall recognize other requirements of the plan and be compatible with those requirements.

Nutrient applications associated with irrigation systems shall be applied in accordance with the requirements of Oklahoma NRCS Irrigation Water Management (449) standard and according to the NRCS National Engineering Handbook, Part 652, Irrigation Guide.

Using effluent water for irrigating crops and grasses can increase salt concentrations in the soil creating a negative impact on plant growth. Oklahoma Technical Note Agronomy OK-17 contains guidance for irrigating with effluent water.

SOIL AND TISSUE SAMPLING LABORATORY ANALYSIS (TESTING)

A current soil test will be no older than three (3) years unless otherwise required by federal, state or local laws. Nutrient planning shall be based on current soil or tissue (where used as a supplement) test results developed in accordance with OSU guidance.

Soil samples shall be taken at least once every three (3) years for analysis or more often if the crop rotation changes.

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Soil salinity testing to monitor salt accumulation in the soil is recommended when large quantities of manure or organic by-products are being applied annually. This salinity analysis can be done in conjunction with routine soil testing every 3 years.

A soil salinity analysis shall be performed when waste water effluent used for irrigation has been applied on an area for 3 years or more. The area shall be monitored for salinity accumulation annually using a soil salinity analysis as long as effluent is being applied. This analysis should include results for Na, Ca, Mg, K, B, EC, TSS (total soluble salts), Sodium Adsorption Ratio (SAR), Exchangeable Sodium Percentage (ESP), and pH.

Grass plantings done under the Oklahoma NRCS Pasture and Hay Planting (512) or Range Planting (550) standards shall have a current soil analysis for plant available N, P, K and pH. Nitrogen will be assumed to be zero (0) if the test is older than 60 days. **Tables 1, 2, 3, and 4** provide detailed guidance for determining fertilizer and lime requirements for grass establishment.

All grass plantings done under the Oklahoma NRCS Critical Area Planting (342) standard should have a soil analysis performed. In lieu of a current soil test, a fertilizer application of 40 lbs/ac N, 40 lbs/ac P_2O_5 , and 40 lbs/ac K_2O will be recommended.

Manure or organic by-products (excluding effluent water) may be used for the establishment of permanent grasses however, application rates and application timing will be determined according to the guidance used for inorganic/commercial fertilizers.

Fertilizer applications for grass establishment should be done in a timely manner that allows the grass to utilize nutrients for quicker establishment, to minimize weed populations, and to avoid loss of fertilizer from the crop zone. When nitrogen is required for grass plantings, the application shall be made between March 1 and June 30 for warm season species and September 1 through November 15 for fall planted cool season species or March 1 through April 30 for spring planted cool season species. Phosphorus and potassium applications may be made at the same dates as above or incorporated at the last tillage for seedbed preparation prior to planting. Lime applications will be incorporated into the soil prior to planting grass.

All soil samples will be collected at the 0 to 6-inch depth. Occasionally, there will be reasons for taking shallower soil samples (1-3 inch depth) for

analysis (e.g. potential pH concerns on a no till field).

A minimum of 15 to 20 core samples shall be taken randomly from the field or sample area. The core samples shall be collected and mixed thoroughly in a clean plastic container. Approximately one (1) pint of the mixed core samples will be placed in a bag and sent for testing.

When the soil test for N exceeds the recommended plant requirements (excessive), a representative soil sample will be taken for the subsoil in addition to the 6-inch sample. This sample shall represent the soil layer from 7 to 24 inches in depth. *Subsoil samples will not be required for grass establishment.* The OSU County Extension Service Office is available to assist with the soil testing process. Additional information concerning soil sampling can be found in the **OSU Extension Fact Sheet F-2207, How to Get a Good Soil Sample.**

If a soil test laboratory other than OSU is used, the lab shall use the same phosphorus and potassium extractant (Mehlich-3) as used by the OSU lab and nutrient recommendations will be the same as those used by OSU. The soil testing laboratory shall be a member of the North American Proficiency Testing Program.

Soil testing shall include analysis for any nutrients for which specific information is needed to develop the nutrient management plan (e.g. pH, N, P, and K). Additional information concerning soil testing can be found in the **OSU Extension Fact Sheet F-2225, OSU Soil Test Interpretations and Fact Sheet F-2901, Procedures Used by OSU Soil, Water, and Forage Analytical Laboratory.**

Additional Criteria to Budget and Supply Nutrients for Plant Production

Inorganic/Commercial Nutrient Application Rates

Application rates of inorganic/commercial sources of nutrients shall be based on recommendations that consider current soil test results, realistic yield goals and management capabilities. OSU nutrient recommendations for major crops and grasses are contained in **Tables 1, 2, 3, and 4.**

The following guidance shall also be used when applying inorganic/commercial sources of nutrients:

- ♦ **Nitrogen Application** - N application rates shall match the required rates as closely as possible (**Table 1**).

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- ◆ **Phosphorus (P_2O_5) Application** - P_2O_5 application rates shall match the required rates as closely as possible (Table 2).
- ◆ **Potassium (K_2O) Application** - K_2O application rates shall match the required rates as closely as possible (Table 3).
- ◆ **Other Plant Nutrients** - The planned rates of application for secondary and micronutrients shall be consistent with OSU guidance (OSU Extension Fact Sheet F-2225).
- ◆ **Available fertilizer blends make it difficult to apply fertilizer to meet specific recommendations. Applications of inorganic/commercial nutrients will be considered adequate when:**
 - ◆ *The applied rate is no more than 10% below or 10 pounds less, whichever is greater, than the recommended application rate.*
 - ◆ The applied rate of either N or P_2O_5 does not exceed 50 lbs/ac of the recommended application rate.
- ◆ **Starter Fertilizers** - Starter fertilizers containing N, P, and/or K may be applied to row crops to overcome early stress of the root environment such as a cool, wet soil. Starter fertilizers are applied in the row with the seed or banded along side the seed. In general, OSU guidance recommends no more than 30 lbs. of either N or K_2O per acre or in combination for wheat or 7 lbs/ac for corn. No more than 90 lbs. per acre of P_2O_5 will be used in a starter fertilizer. These rates will vary with crop selection and climate conditions. The OSU County Extension Service Office is available for assistance in this area. The amount of starter fertilizer applied will be included in the nutrient budget.
- ◆ **Maintenance Fertilizers** - USDA Farm Programs such as the Conservation Reserve Program (CRP) require a periodic maintenance amount of fertilizer to maintain a stand of grass. In these long-term deferment programs the fertilizer maintenance recommendations for N, P, and K are contained in Tables 1, 2, and 3 on page 15.

Nutrient Application Timing and Method

Timing and method of nutrient application shall correspond as closely as possible with plant nutrient uptake characteristics, cropping system limitations, weather and climatic conditions, and field accessibility.

Nutrients will not be applied to frozen, snow covered or saturated soil.

Additional Criteria Applicable to Utilizing Manure or Organic By-Products as a Plant Nutrient Source

Nutrient values of manure and organic by-products (excluding sewage sludge) shall be determined prior to land application based on laboratory analysis. The analysis shall include the results for moisture content, N, P, and K as a minimum. In the case of applying solid or semi-solid manure, the waste shall be sampled and analyzed at least once each year. The manure testing laboratory shall be certified through the Manure Analysis Proficiency Program administered by the Minnesota Department of Agriculture and Soil Science Society of America. A list of labs certified in this program can be found at the website below:

<http://www.mda.state.mn.us/appd/manurelabs.htm?SEARCH.X=15\&SEARCH.Y=10>

Historic laboratory analysis for solid and semi-solid manure values may be used in lieu of annual manure testing provided at least 3 years of manure testing history are available prior to application. The historic values must provide an accurate analysis of the material being applied. Manure analysis will be performed at least once every three years or sooner depending on federal, state or local laws. It is recommended that this be timed with soil testing procedures.

All waste water effluent shall be tested prior to land application. Refer to the Oklahoma NRCS Waste Utilization (633) standard, Oklahoma Technical Note Agronomy OK-17, job sheets JS 633 01 and JS 633 02 for guidance.

Preliminary planning decisions may be based on values found in the **Agricultural Waste Management Field Handbook, Chapter 4 - Agricultural Waste Characteristics**. Actual application rates will be adjusted accordingly based on the current manure analysis.

Plant nutrient removal rates can be found in Table 7. Crops not listed in Table 7 may be found in the **Agricultural Waste Management Field Handbook, Chapter 6 – Role of Plants in Waste Management (Table 6-6)**.

Do not apply manure or organic by-products in the following situations as described in the Published County Soil Survey or Section II of the NRCS Field Office Technical Guide:

- ◆ Liquid animal manure will not be land applied within 500 feet of the corner of an occupied

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residence not owned or operated by the feeding operation.

- ◆ Liquid animal manure will not be land applied within 300 feet of an existing public or private drinking water well.
- ◆ To areas within 100 feet of a perennial stream, pond, well, or sinkhole, unless an established buffer strip is present. The width of the buffer strip will be used as a set back distance for application purposes. The buffer strip must meet the requirements for design and maintenance established in the appropriate NRCS buffer standard and specification.
- ◆ To areas within 50 feet of an intermittent stream unless an established buffer strip is present. The width of the buffer strip will be used as a set back distance for application purposes. The buffer strip must meet the requirements for design and maintenance established in the appropriate NRCS buffer standard and specification.
- ◆ To fields with > 15% slope.
- ◆ To soils less than 10 inches in depth to parent material.
- ◆ On soils that are frequently flooded.
- ◆ On soils that are frozen, snow covered, or water saturated (including periods of heavy rain when water ponding has occurred on the soil surface).
- ◆ On soils where the rock fragments in the surface layer are 3 to 10 inches in diameter and exceed 50% by weight.
- ◆ On soils where the rock fragments in the soil surface layer are > 10" in diameter and exceed 25% by weight.
- ◆ On soils where the rock fragments are > 10 inches in diameter which covers > 3% of the soil surface and the slope is > 8%. (Soil map unit name will include the description of Extremely Stoney, Extremely Bouldery, or Extremely Rubbly or Very Rubbly)
- ◆ On areas eroding at levels greater than the soil loss tolerance, "T", from wind or water erosion or active gullies unless following a conservation plan that will reduce erosion below "T". Use current Oklahoma NRCS soil loss prediction methods.
- ◆ On soils that are occasionally flooded. However, manure may be applied between June 20 and September 20 on soils classified as occasionally flooded. Manure may also be applied to soils classified as

occasionally flooded between February 1 and April 20 if the area is established to cool season grasses 4 inches in height at the time of application. In no case will manure be applied when the soil is water saturated or when ponding has occurred on the soil surface after periods of heavy rain.

Organic Nutrient Application Rates

Timing and method of nutrient application shall correspond as closely as possible with plant nutrient uptake characteristics, cropping system limitations, weather and climatic conditions, and field accessibility. Nutrients materials will be applied uniformly to the area.

The application rate for waste water effluent applied with irrigation shall not exceed field capacity for the soil, create runoff and shall minimize ponding.

The following shall also be used when applying manure or organic by-products:

- ◆ **Nitrogen Application** – The amount of N applied from manure will not exceed the annual crop requirement for N. In some situations, additional N from inorganic/commercial sources may be required to supplement the organic sources. The N applied from inorganic/commercial sources shall match the crop requirement as closely as possible and shall not exceed 10% of the recommended inorganic/commercial fertilizer rate. Manure maybe applied to a legume crop at a rate equal to the estimated N removal in the harvested plant biomass.
- ◆ **Phosphorus Application** – The maximum planned rates of P application shall be determined using the Oklahoma Phosphorus Assessment Worksheet (**Tables 8 and 9**).

Field Risk Assessment

When applications of manure or other organic by-products are planned, a field-specific assessment of the potential for P transport from the site shall be completed. This assessment shall be done using the Oklahoma Phosphorus Assessment Worksheet (**Exhibit 2, Tables 8 and 9**).

Heavy Metals Monitoring

When sewage sludge is applied, the accumulation of potential pollutants (including arsenic, cadmium, copper, lead, mercury, selenium, and zinc) in the soils shall be monitored in accordance with the US Code, Reference 40CFR, Parts 403 and 503, and/or any applicable state and local laws or regulations. The role of monitoring the application of sewage or municipal sludge in

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Oklahoma is the responsibility of the Oklahoma Department of Environmental Quality (DEQ). Contact DEQ for information concerning the use of municipal sludge.

The Oklahoma Corporation Commission regulates land applications of waste material from oil and gas wells. Contact the Oklahoma Corporation Commission for information concerning regulations and permitting for land applications of these materials.

Additional Criteria to Minimize Agricultural Non-point Source Pollution of Surface and Ground Water Resources

For water bodies in watersheds identified by the Oklahoma Water Resources Board (OWRB) as Nutrient Limited Waters (NLW) in Appendix A and as designated in 785:45-5-29 of the Oklahoma's Water Quality Standards, an assessment shall be completed for the potential transport of P when manure or organic by-products are to be applied to a field. The Oklahoma Phosphorus Assessment Worksheet will be used to make the assessment.

Additional Criteria to Protect Air Quality by Reducing Nitrogen Emissions and the Formation of Atmosphere Particulates

When tillage can be performed, surface applications of manure and commercial fertilizer N formulations that are subject to volatilization on the soil surface (e.g. urea) shall be incorporated into the soil within 24 hours of application unless formulations with nitrification inhibitors, urease inhibitors, etc. are used that stabilize and slow the release of N.

When applying liquid forms of manure with irrigation equipment, select application conditions when there is high humidity, little/no wind, and/or other conditions that will minimize volatilization losses into the atmosphere.

Handle and apply poultry litter or other dry types of animal manures when weather conditions are calm and there is less potential for blowing and emission of particulates into the atmosphere.

Additional Criteria to Improve the Physical, Chemical, and Biological Condition of the Soil

Manure or organic by-products incorporated into the soil will improve soil structure.

Incorporate surface applied solid/semi-solid manure or other organic by-products, where tillage is possible, into the soil within 72 hours of application to minimize nutrient losses. Avoid applying materials that will not decompose in the soil.

When non-legume crop residues are returned to the soil, additional N may be needed to supplement the N being used by the soil microbes to breakdown residues. The additional N may be needed to avoid N deficiencies in the next crop.

Estimated N amounts needed per ton of crop residue are:

- Add 10 lbs. of N per ton of dry residue from non-legume crops.
- Add 5 lbs. of N per ton of non-legume green manure crop produced.

Most of the N legumes fix from the atmosphere is generally used for its own growth. Typical amounts of N remaining for the next crop are shown in **Table 6**.

High sodium concentrations in the soil will cause soil particles to disperse and deteriorate soil structure. The use of nutrient sources with high salt content and SAR will be minimized unless provisions are used to leach salts below the crop root zone.

CONSIDERATIONS

Avoid induced deficiencies of nutrients due to excessive levels of other nutrients.

Consider cover crops whenever possible to utilize and recycle residual nutrients.

Consider the following application methods, timing, and fertilizer materials that reduce the risk of nutrients being transported to ground and surface waters, or into the atmosphere by:

- ♦ using split applications of N to provide nutrients at times for maximum crop utilization,
- ♦ using Ramped Calibration Strips or N Rich Strips to determine mid-season (split) N application rates,
- ♦ using sensor technology (e.g. Green Seeker) to determine plant biomass production in conjunction with N rich strips or calibration strips,
- ♦ using application equipment with sensor technology (e.g. Green Seeker) to apply nutrients,
- ♦ using equipment with precision guided tools (e.g. GPS) for nutrient application,
- ♦ avoiding winter N application for spring seeded crops,
- ♦ banding P near the seed row,

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- ♦ immediate incorporation of land applied manure or organic by-products,
- ♦ delaying field application of animal manures or other organic by-products if precipitation capable of producing runoff and erosion is forecast within 24 hours of the time of the planned application,
- ♦ using commercially available enhanced efficiency fertilizers or fertilizer additives (e.g. nitrification inhibitors, urease inhibitors and slow or controlled release fertilizers) that more closely match nutrient release and availability for plant uptake.

Consider the potential problems from odors associated with the land application of animal manure, especially when applied near or upwind of residences.

Consider the potential to affect National Register listed or eligible cultural resource sites.

Consider annual reviews to determine if changes in the nutrient budget are desirable (or needed) for the next planned crop.

On sites which have special environmental concerns, consider other sampling techniques. (For example: Soil profile sampling for N or surface sampling for P accumulation or pH changes.)

Consider ways to modify the chemistry of animal manure, including modification of the animal's diet to reduce the manure nutrient content, to enhance the producer's ability to manage manure effectively.

When applying manure with irrigation equipment, modification of the equipment can reduce the potential for volatilization of N from the time the manure leaves the application equipment until it reaches the surface of the soil (e.g. drop down tubes for center pivots). Nitrogen volatilization from manure in a surface irrigation system will be reduced when applied under a crop canopy.

Consider the combined effects of nutrient application methods and tillage operations on greenhouse gas emissions (e.g. nitrous oxide N_2O , carbon dioxide CO_2), and the potential for carbon sequestration.

PLANS AND SPECIFICATIONS

Plans and specifications shall be in keeping with this standard and shall describe the requirements for applying the practice to achieve its intended purpose(s), using nutrients to achieve production goals and to prevent or minimize water quality impairment.

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The following components shall be included in the nutrient management plan as applicable:

- ♦ aerial photograph or map and a soil map of the site,
- ♦ current and/or planned plant production sequence or crop rotation,
- ♦ results of soil, plant, water, manure or organic by-product sample analyses,
- ♦ realistic yield goals for the crops in the rotation,
- ♦ recommended nutrient rates, timing, form, and method of application and incorporation,
- ♦ location of designated sensitive areas or resources and the associated, nutrient management restriction,
- ♦ guidance for implementation, operation, maintenance, recordkeeping, and
- ♦ complete a nutrient budget for N, P, and K for the rotation or crop sequence.

If increases in soil phosphorus levels are expected, plans shall document:

- ♦ the soil phosphorus levels at which it may be desirable to convert to phosphorus based implementation,
- ♦ the relationship between soil phosphorus levels and potential for phosphorus transport from the field, and
- ♦ the potential for soil phosphorus drawdown from the production and harvesting of crops and
- ♦ the management activities or techniques used to reduce the potential for phosphorus loss.

When applicable, plans shall include other practices or management activities as determined by specific regulation, program requirements, or producer goals.

OPERATION AND MAINTENANCE

The owner/client is responsible for safe operation and maintenance of this practice including all equipment. The owner/client should consider addressing the following:

- ♦ Review plans periodically to determine if adjustments or modifications are needed. Changes in animal numbers, feed rations, crop rotations, storage facilities, and/or application timing or methods would be reasons for modifications to the nutrient management plan. Plans should be reviewed every three (3) years in conjunction

with the soil test cycle or with applicable federal, state or local laws.

- ◆ Calibration of application equipment to ensure uniform distribution of material at planned rates.
- ◆ Protect fertilizer, manure and/or organic by-products storage facilities from weather and accidental leakage or spillage.
- ◆ Documentation of the actual rate at which nutrients were applied. When the actual rates used differ from or exceed the recommended and planned rates, records will indicate the reasons for the differences.
- ◆ Records should be maintained to document plan implementation. As applicable, records should include:
 - ◆ soil test results and recommendations for nutrient application,
 - ◆ quantities, analyses and sources of nutrients applied,
 - ◆ dates and method of nutrient applications,
 - ◆ weather conditions and soil moisture at the time of application; time when a rainfall event or irrigation occurred after application of manure; time incorporation occurred after application of manure.
 - ◆ crops planted, planting and harvest dates, yields, and crop residues removed,
 - ◆ results of plant, water, manure, and organic by-product analyses, and
 - ◆ dates of review and person performing the review and recommendations that resulted from the review.

Records should be maintained for five (5) years; or for a period longer than five years if required by other Federal, state, or local ordinances, or program or contract requirements.

Workers shall avoid unnecessary exposure to hazardous chemical fertilizers and/or organic by-products. Protection should include the use of protective clothing when working with plant nutrients. Extra caution must be taken when handling ammonia sources of nutrients, or when dealing with organic wastes stored in unventilated enclosures.

Material generated by cleaning nutrient application equipment should be disposed of according to state and local guidelines and regulations. Excess material should be collected and stored or field applied in an appropriate manner.

Nutrient containers should be recycled in compliance with state and local guidelines or regulations.

REFERENCES

Follett, R.F. 2001. Nitrogen Transformation and Transport Processes. pp. 17-44, In R.F. Follett and J. Hatfield. (eds.). 2001. Nitrogen in the Environment; Sources, Problems, and Solutions. Elsevier Science Publishers. The Netherlands. 520 pp.

Sims, J.T. (ed.) 2005. Phosphorus: Agriculture and the Environment. Agron. Monogr. 46. ASA, CSSA, and SSSA, Madison, WI.

Stevenson, F.J. (ed.) 1982. Nitrogen in Agricultural Soils. Agron. Series 22. ASA, CSSA, and SSSA, Madison, WI.

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SOIL TEST INTERPRETATIONS

Information contained in Tables 1, 2, 3, 4, and 5 comes directly from Oklahoma State Universities Extension Fact Sheet, *F-2225, OSU Soil Test Interpretations, and the Oklahoma USDA Cost-Share Lime and Fertilizer Recommendations (May 2004)*. The information contained in the tables should be used in conjunction with current soil test analysis to prepare nutrient budgets and to develop nutrient management plans for land users.

Nutrient requirements for crops not listed on the following tables should be referred to the OSU Extension Agent or Specialist.

Oklahoma State Extension Fact Sheets are available on-line at the following web site:

<http://pods.dasnr.okstate.edu/docushare/dsweb/View/Collection-12>

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TABLE 1
Nitrogen Requirements

The nitrogen requirement is calculated by subtracting the soil test nitrogen value from the nitrogen required for a selected crop and yield goal.

	Wheat	Barley	Oat		Grain Sorghum		Corn		Cotton	
N Required lbs/ac	Yield Goal bu/ac				N Required lbs/ac	Yield Goal lbs/ac	N Required lbs/ac	Yield Goal bu/ac	N Required lbs/ac	Yield Goal bales/ac
30	15	20	25		30	2000	40	40	30	0.50
40	20	25	35		40	2500	50	50	45	0.75
60	30	35	55		50	3000	60	60	60	1.00
80	40	50	70		70	4000	85	85	75	1.25
100	50	60	90		85	4500	110	100	90	1.50
125	60	75	105		100	5000	130	120	105	1.75
155	70	90	125		160	7000	190	160	120	2.00
185	80	100	140		195	8000	215	180	135	2.25
240	100	125	175		230	9000	240	200	150	2.50
							300	250	165	3.00
							360	300	180	3.50

Cool Season Grasses (Fescue, Orchard,)		Established Weeping Lovegrass		Established Old World Bluestem		Established Bermudagrass	
N Required lbs/ac	Yield Goal tons/ac	N Required lbs/ac	Yield Goal tons/ac	N Required lbs/ac	Yield Goal tons/ac	N Required lbs/ac	Yield Goal tons/ac
60	1	35	1	35	1	50	1
120	2	70	2	70	2	100	2
180	3	110	3	110	3	150	3
240	4	160	4	150	4	200	4
300	5	220	5	200	5	260	5
						320	6
						400	7

Alfalfa	Peanuts	Soybeans	Mungbeans, Cowpeas, Guar
10 to 20 lbs/ac for establishment. None needed for maintenance	10 to 20 lbs/ac with P and K	10 to 20 lbs/ac with P and K	10 to 20 lbs/ac with P and K

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TABLE 1 (Cont.)
Nitrogen Requirements

The nitrogen requirement is calculated by subtracting the soil test nitrogen value from the nitrogen required for a selected crop and yield goal.

Canola		Virgin Native Hay Meadow		Small Grains for Grazing		Forage Sorghum or Corn Silage		
N Required lbs/ac	Yield Goal lbs/ac	N Required lbs/ac	Yield Goal tons/ac	N Required lbs/ac	Yield Goal tons/ac	N Required lbs/ac	Yield Goal	
							Silage tons/ac	Hay tons/ac
50	1000	0	1.0	30	0.5	45	5	2.5
75	1500	50	1.5	60	1.0	90	10	5.0
100	2000	100	1.6	90	1.5	135	15	7.5
125	2500			120	2.0	185	20	10.0
150	3000			150	2.5	240	25	12.5
175	3500			180	3.0	300	30	15.0

Nitrogen Recommendations for Establishing Grass

Soil Test N ^{1/}	Native Grass / Bluestem Establishments	All Other Grass Establishments
	N Required lbs/ac	
0	0	40
1	0	39
2	0	38
3	0	37
4	0	36
5	0	35
6	0	34
7	0	33
8	0	32
9	0	31
10	0	30
11	0	29
12	0	28
13	0	27
14	0	26
15	0	25
16	0	24
17	0	23
18	0	22
19	0	21
20	0	20
21+	0	0

^{1/} Nitrogen soil test values are only valid if test is within the last 60 days; therefore assume nitrogen soil test of zero (0) when old tests are used.

Note: For recommendations on maintenance of grass stands for long-term deferment programs (e.g. CRP) follow the guidance in Tables 1, 2, 3 on Page 15 of this standard.

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TABLE 2
Phosphorus Requirements

P Soil Test Index	Small Grains		Grain Sorghum		Corn		Cotton	
	P ₂ O ₅ lbs/ac	Percent Sufficiency	P ₂ O ₅ lbs/ac	Percent Sufficiency	P ₂ O ₅ lbs/ac	Percent Sufficiency	P ₂ O ₅ lbs/ac	Percent Sufficiency
0	80	25	60	40	80	30	75	55
10	60	45	50	60	60	60	60	70
20	40	80	40	80	40	80	45	85
40	20	90	20	95	20	95	30	95
65+	0	100	0	100	0	100	0	100

P Soil Test Index	Established Cool Season Grasses		Established Weeping Lovegrass		Established Old World Bluestem		Established Bermudagrass	
	P ₂ O ₅ lbs/ac	Percent Sufficiency	P ₂ O ₅ lbs/ac	Percent Sufficiency	P ₂ O ₅ lbs/ac	Percent Sufficiency	P ₂ O ₅ lbs/ac	Percent Sufficiency
0	80	30	60	50	60	50	75	50
10	60	50	50	70	40	70	60	65
20	40	70	40	85	30	85	40	80
40	20	95	20	95	20	95	20	95
65+	0	100	0	100	0	100	0	100

P Soil Test Index	Canola		Small Grains for Grazing		Legumes in Pasture		Virgin Native Hay Meadows	
	P ₂ O ₅ lbs/ac	Percent Sufficiency	P ₂ O ₅ lbs/ac	Percent Sufficiency	P ₂ O ₅ lbs/ac	Percent Sufficiency	P ₂ O ₅ lbs/ac	Percent Sufficiency
0	80	25	80	25	75	50	40	50
10	60	45	60	45	60	65	20	80
20	40	80	40	80	40	80	0	95
40	20	90	20	90	20	95	0	100
65+	0	100	0	100	0	100	0	100

P Soil Test Index	Alfalfa		Peanuts		Soybeans		Mungbean, Cowpeas, Guar	
	P ₂ O ₅ lbs/ac	Percent Sufficiency	P ₂ O ₅ lbs/ac	Percent Sufficiency	P ₂ O ₅ lbs/ac	Percent Sufficiency	P ₂ O ₅ lbs/ac	Percent Sufficiency
0	200	20	80	40	70	40	70	40
10	150	50	60	60	50	60	50	60
20	100	70	40	80	30	80	30	80
40	60	90	20	95	20	95	20	95
65+	0	100	0	100	0	100	0	100

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TABLE 2 (Cont.)
Phosphorus Requirements

Phosphorus Recommendations for Establishing Grass

P Soil Test Index	Bermudagrass Establishments	Fescue and Cool Season Grass Establishments	Bluestem and Lovegrass Establishments	Native Grass Establishments
	P ₂ O ₅ lbs/ac			
0	40	40	40	40
1	40	40	40	38
2	40	40	40	36
3	40	40	40	34
4	40	40	40	32
5	40	40	40	30
6	40	40	40	28
7	40	40	40	26
8	40	40	40	24
9	40	40	40	22
10	40	40	40	20
11-20	40	40	30	0
21-40	30	30	20	0
41-48	20	20	0	0
49+	0	0	0	0

Note: For recommendations on maintenance of grass stands for long-term deferment programs (e.g. CRP) follow the guidance in Tables 1, 2, 3 on Page 15 of this standard.

P Soil Test Index	Forage Sorghum or Corn Silage	
	P ₂ O ₅ lbs/ac	Percent Sufficiency
0	100	30
10	75	60
20	45	80
40	25	95
65+	0	100

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TABLE 3
Potassium Requirements

K Soil Test Index	Small Grains		Grain Sorghum		Corn		Cotton	
	K ₂ O lbs/ac	Percent Sufficiency	K ₂ O lbs/ac	Percent Sufficiency	K ₂ O lbs/ac	Percent Sufficiency	K ₂ O lbs/ac	Percent Sufficiency
0	60	50	100	40	120	40	110	40
75	50	70	75	65	80	60	80	60
125	40	80	50	80	60	75	60	75
200	20	95	30	95	40	90	40	90
250+	0	100	0	100	0	100	0	100

K Soil Test Index	Established Cool Season Grasses		Established Weeping Lovegrass		Established Old World Bluestem		Established Bermudagrass	
	K ₂ O lbs/ac	Percent Sufficiency	K ₂ O lbs/ac	Percent Sufficiency	K ₂ O lbs/ac	Percent Sufficiency	K ₂ O lbs/ac	Percent Sufficiency
0	70	60	80	40	80	40	140	40
75	60	70	60	60	60	60	80	60
125	50	80	40	80	40	80	50	75
200	30	95	20	95	20	95	30	90
250+	0	100	0	100	0	100	0	100

K Soil Test Index	Canola		Small Grains for Grazing		Legumes in Pasture		Virgin Native Hay Meadows	
	K ₂ O lbs/ac	Percent Sufficiency	K ₂ O lbs/ac	Percent Sufficiency	K ₂ O lbs/ac	Percent Sufficiency	K ₂ O lbs/ac	Percent Sufficiency
0	60	50	60	50	80	50	40	40
75	50	70	50	70	60	65	30	70
125	40	80	40	80	40	80	20	85
200	20	95	20	95	20	95	0	95
250+	0	100	0	100	0	100	0	100

Potassium Recommendations for Establishing Grass

Potassium (K) Soil Test Index	Bermudagrass Establishments	Fescue and Cool Season Grass Establishments	Bluestem and Lovegrass Establishments	Native Grass Establishments
	K ₂ O lbs/ac			
0-40	40	40	40	40
41-80	40	40	40	30
81-125	40	40	30	20
126-200	30	30	20	0
201-216	20	20	0	0
217+	0	0	0	0

Note: For recommendations on maintenance of grass stands for long-term deferment programs (e.g. CRP) follow the guidance in Tables 1, 2, 3 on Page 15 of this standard.

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TABLE 3 (Cont.)
Potassium Requirements

K Soil Test Index	Alfalfa		Peanuts		Soybeans		Mungbeans, Cowpeas, Guar	
	K ₂ O lbs/ac	Percent Sufficiency	K ₂ O lbs/ac	Percent Sufficiency	K ₂ O lbs/ac	Percent Sufficiency	K ₂ O lbs/ac	Percent Sufficiency
0	280	20	80	40	100	40	80	50
75	210	50	60	60	70	60	60	60
125	140	70	40	75	60	75	45	80
200	80	90	30	90	40	90	30	90
250	40	100	0	100	0	100	0	100
350+	0	100	0	100	0	100	0	100

K Soil Test Index	Forage Sorghum or Corn Silage	
	K ₂ O lbs/ac	Percent Sufficiency
0	180	40
75	130	60
125	90	75
200	60	90
250+	0	100

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Nutrient Requirements for Maintenance of Grasses in USDA Deferment Programs (e.g., CRP)

Table 1	
Soil Test N	Stand Maintenance of All Grasses
	N lbs/acre
0	40
1	39
2	38
3	37
4	36
5	35
6	34
7	33
8	32
9	31
10	30
11	29
12	28
13	27
14	26
15	25
16	24
17	23
18	22
19	21
20	20
21+	0

Table 2			
P Soil Test Index	Native Grass Stand Maintenance	Bluestem and Lovegrass Stand Maintenance	Stand Maintenance of All Other Grasses
	P ₂ O ₅ lbs/acre		
0	40	40	40
1	38	40	40
2	36	40	40
3	34	40	40
4	32	40	40
5	30	40	40
6	28	40	40
7	26	40	40
8	24	40	40
9	22	40	40
10	20	40	40
11-20	0	30	40
21-40	0	20	30
41-48	0	0	20
49+	0	0	0

Table 3			
K Soil Test Index	Native Grass Stand Maintenance	Bluestem and Lovegrass Stand Maintenance	Stand Maintenance for All Other Grasses
	K ₂ O lbs/ac		
0-40	40	40	40
41-80	30	40	40
81-125	20	30	40
126-200	0	20	30
201-216	0	0	20
217+	0	0	0

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TABLE 4
Liming Requirements

Lime required to raise the soil pH to 6.8 for all crops and 5.5 for continuous wheat or for grass establishment

Soil Buffer Index	All Crops, Established Grasses, or Legumes except Continuous Wheat	*Continuous Wheat and New Seedlings of Grass (Establishment)
	**ECCE Lime (tons/ac)	**ECCE Lime (tons/ac)
6.0	5.2	1.4
6.1	4.7	1.2
6.2	4.2	1.0
6.3	3.7	0.9
6.4	3.1	0.8
6.5	2.5	0.6
6.6	1.9	*** 0.5
6.7	1.4	*** 0.5
6.8	1.2	*** 0.5
6.9	1.0	*** 0.5
7.0	0.7	*** 0.5
7.1	***0.5	*** 0.5
7.2	0.0	*** 0.5

* Lime will be required for grass establishment when the soil test pH is <4.5 for fescue and lovegrass and <5.0 for all other grasses.

** Effective Calcium Carbonate Equivalent - Pure calcium carbonate ground fine enough to be 100% effective. The rate of aglime to apply can be determined from the ECCE requirement using the following formula: Tons of aglime/ac = Tons ECCE lime required / %ECCE x 100.

*** Lime applications at or below 0.5 tons per acre are recommended, but not required due to economics.

TABLE 5
Crop pH Preference *

Crop	Preferred pH Range
Cowpeas, Mungbeans, Corn, Guar, Oats, Rye, Sorghum, Sudan, Wheat	5.5 – 7.0
Cotton	5.7 – 7.0
Canola, Soybeans, Peanuts,	5.8 – 7.0
Barley	6.5 – 7.0
**Forages	Preferred pH Ranges
Bluestem, Native Hay, Fescue, Weeping Lovegrass	4.5 – 7.0
Vetch, Crimson Clover, Orchardgrass, Ryegrass	5.5 – 7.0
Bermudagrass	5.7 – 7.0
Alsike, Red and White (ladino) Clovers, Arrowleaf Clover	6.0 – 7.0
Alfalfa, Sweet Clover	6.2 – 7.5

* Most legumes will tolerate a pH 0.5 units less and 1.0 unit higher than indicated above, but production will be significantly reduced. Non-legumes tend to tolerate a pH 0.5 to 1.0 unit less (but not less than a pH of 4.0) and 1.0 to 2.0 units higher than indicated above.

** Lime will be required for grass establishment when the soil test pH is <4.5 for fescue and lovegrass and <5.0 for all other grasses.

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TABLE 6
Nitrogen Credits

Average Nitrogen Remaining After Legume Crop

Legume	*Nitrogen remaining for next crop (Legume hayed or harvested)	**Green manure crop nitrogen remaining (Legume unharvested)
Alfalfa	80	200
Ladino Clover	60	180
Sweet Clover	60	120
Red Clover	40	115
White Clover	20	100
Soybeans	20	60
Cowpeas	30	90
Vetch	40	80
Lespedeza (annual)	20	85
Peas	40	70
Peanuts	20	40
Beans	20	40

* These numbers are derived from crops that are harvested and have the remaining crop residues returned to the soil by tillage. (Reference - Oklahoma Soil Fertility Handbook, Sixth Edition (2006), pg. 18)

** A green manure crop is not harvested or grazed and is returned to the soil just prior to maturity. These numbers reflect the amount of nitrogen available for the next crop when the legume is used as a green manure crop. The numbers are adjusted to account for 30% nitrogen loss due to volatilization, leaching, and microbial action. (Reference – Soil Fertility and Fertilizers, Tidsdale and Nelson, pg. 128 and 566)

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TABLE 7
Crop Nutrient Removal *

% of Dry Material Harvested					
Crop	Unit	Weight/Unit	% N	% P	% K
Barley	grain	48 lbs/bu	1.82	0.34	0.43
	straw	72 lbs/bu	0.75	0.11	1.25
Corn	grain	56 lbs/bu	1.61	0.28	0.40
	stover	56 lbs/bu	1.11	0.20	1.34
Oats	grain	32 lbs/bu	1.95	0.34	0.49
	straw	64 lbs/bu	0.63	0.16	1.66
Rye	grain	56 lbs/bu	2.08	0.26	0.49
	straw	84 lbs/bu	0.50	0.12	0.69
Sorghum	grain	56 lbs/bu	1.67	0.36	0.42
	stover	56 lbs/bu	1.08	0.15	1.31
Soybeans	beans	60 lbs/bu	6.25	0.64	1.90
	stover	75 lbs/bu	2.25	0.22	1.04
Wheat	grain	60 lbs/bu	2.08	0.62	0.52
	straw	102 lbs/bu	0.67	0.07	0.97
Cotton	lint & seed	500 lbs/bale	2.67	0.58	0.83
	burs & stalks	3 lbs/lb of lint	1.75	0.22	0.83
% of Dry Material Harvested					
Forage Crop			% N	% P	% K
Alfalfa			2.25	0.22	1.87
Bermuda			1.88	0.19	1.40
Tall Fescue			1.97	0.20	2.00
Ryegrass			1.67	0.27	1.42
Wheatgrass			1.42	0.27	2.68
Dallisgrass			1.92	0.20	1.72
Native Hay			1.06	0.40	1.58
Clovers			2.00	0.22	1.66
Lespedeza			2.33	0.21	1.06

* These crop nutrient removal figures come from the NRCS Agricultural Waste Management Field Handbook, Chapter 6, Role of Plants in Waste Management (Table 6-6). The handbook lists additional crops not listed above. These numbers represent average figures taken from multiple sources and are nutrients removed in the harvested portion of the crop. These figures can be used as guidance for waste management planning purposes. Actual waste application will be based on soil test.

Example calculation to estimate nutrients removed

Wheat: Yield 40 bu/ac = 60 lbs/bu x 40 bu = 2400 lbs of grain

40 bu/ac x 102 lbs/bu straw = 4080 lbs/ac straw produced

1 ton/ac straw baled and removed from field = 1 ton/ac x 2000 lbs = 2000 lbs of straw/ac

Grain: 2400 lbs/ac x 0.0208 (%N/lb) = 49.92 lbs/ac Nitrogen in grain

2400 lbs/ac x 0.0062 (%P/lb) = 14.88 lbs/ac Phosphorus in grain

2400 lbs/ac x 0.0052 (%K/lb) = 12.48 lbs/ac Potassium in grain

Straw: 2000 lbs/ac x 0.0067 (%N lb) = 13.40 lbs/ac Nitrogen in straw

2000 lbs/ac x 0.0007 (%P lb) = 1.40 lbs/ac Phosphorus in straw

2000 lbs/ac x 0.0097 (%K/lb) = 19.40 lbs/ac Potassium in straw

Total Nutrient Removed = 63.32 lbs/ac N removed, 16.28 lbs/ac P removed, 31.88 lbs/ac K removed

NRCS, OK
March 2007

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Exhibit 1 Oklahoma Nutrient Budget Worksheet							
Landowner:				Field No.:		Acres:	
Crop Sequence/Rotation				Expected Yield			
Nutrient Content of Manure per ☐ Ton ☐ lbs./1000 gal.							
N Test	N Remaining	P ₂ O ₅		K ₂ O			
Current Soil Test Levels							
N	P	K	pH	SOM%		EC	
Recommended Nutrients to Meet Expected Yield and Grass Establishment (See Tables in 590 Standard)							
N	N for Grass Est.	P ₂ O ₅	K ₂ O	Lime		Other	
Nutrient Sources							
Credits		N		P ₂ O ₅		K ₂ O	
1. Nitrogen credits from previous legume crop							
2. Residual from long-term manure application							
3. Irrigation water							
4. Other (Atmosphere, etc.)		0		0		0	
5. Total Credits		0		0		0	
Applied Nutrients		N		P ₂ O ₅		K ₂ O	
		Alt. 1	Alt. 2	Alt. 1	Alt. 2	Alt. 1	Alt. 2
6. Fertilizer	Starter						
	Other						
7. Manure or Organic by-products							
8. Total Applied Nutrients		0	0	0	0	0	0
9. Total Nutrients (add lines 5 and 8 plus N from Soil Test)		0	0	0	0	0	0
10. Recommended Nutrients		0	0	0	0	0	0
11. Nutrient Status (subtract line 10 from 9)		0	0	0	0	0	0
If line 11 is a negative number, this is the amount of additional nutrients needed to meet the crop recommendation. If line 11 is a positive number, this is the amount by which the applied nutrients exceed the crop requirements.							
Nutrient Management Decision - Including method, rate, form and timing of application.				Producer Selected Alternative:			
Ctrl + d clears worksheet							

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Exhibit 2 OKLAHOMA PHOSPHORUS ASSESSMENT WORKSHEET				
Client Name:		Field(s):		Date:
Planner:		Location:		Crop:
Nutrient Limited Watershed (yes/no):			Ctrl + C clears worksheet	
Site Characteristics				
Soil Test P Index Mehlich III (lbs./ac)				
Application Method	Surface applied and incorporated within 7 days or injected 2" below the surface	Surface applied or incorporated more than 7 days after application	Surface applied on frozen, snow covered, or water saturated ground	
Land Slope %	0 - 8 %	8.1 - 15 %	> 15.1 %	
Transport Characteristics				
Erosion Rate Greater Than "T"	No		Yes	
Flooding Frequency	None	Occasionally	Frequently	
Distance of Manure Application to Perennial Stream, Pond, Well, Sinkhole, or Residence	> 100 ft. to perennial stream, pond, well, sinkhole or a Buffer Strip is Established >300 ft. to Drinking Water Well (Liquid Manure Application) >500 ft. to an Occupied Residence (Liquid Manure Application)		<100 ft. to a perennial stream, pond, well, or sinkhole <300 ft. to Drinking Water Well (Liquid Manure Application) <500 ft. to an Occupied Residence (Liquid Manure Application)	
Distance of Manure Application to Intermittent Stream	> 50 ft. or a Buffer Strip is Established		< 50 ft.	
Depth of Soil	> 20.1 in.	10.1 - 20 in.	0 - 10 in.	
Rock Fragments in Soil Surface 3" to 10 " in diameter and exceed 50% by weight or > 10" in diameter and exceed 25% by weight	No		Yes	
Rocks > 10" in diameter which cover > 3% of the Soil Surface	No		Yes	
Non - Nutrient Limited Watershed – Manure Application Rates				
Nutrient Limited Watershed – Manure Application Rates				

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Table 8
Annual Manure Application Rates for Non-Nutrient Limited Waters

Rating	Soil Test P Index	0 – 8% Slope	8 to 15% Slope	0 to 15% Slope
		Soil > 20" Deep	Soil > 20" Deep	Soil 10" to 20" Deep
*Low	0 – 65	Full Rate	Full Rate Split Application	Half Rate
*Moderate	66 – 250	Full Rate	Half Rate	Half Rate
*High	251 – 400	Half Rate	Half Rate	Half Rate
*Very High	> 400	Plant Removal ¹	Plant Removal ¹	Plant Removal ¹
*Severe	*	No Application	No Application	No Application

Rating	Soil Test P Index	Rocks >10" in diameter which cover >3% of the soils surface and <8% slope
*Low	0 – 65	Half Rate
*Moderate	66 – 250	Half Rate
*High	251 – 400	Half Rate
*Very High	> 400	Plant Removal ¹
*Severe	*	No Application

¹ Note – It may not be feasible to calibrate equipment and make manure applications at the Plant Removal rate.

Table 9
Annual Manure Application Rates for Nutrient Limited Waters

Rating	Soil Test P Index	0 – 8% Slope	8 to 15% Slope	0 to 15% Slope
		Soil > 20" Deep	Soil > 20" Deep	Soil 10" to 20" Deep
*Low	0 – 65	Full Rate	Full Rate Split Application	Half Rate
*Moderate	66 – 120	Full Rate	Half Rate	Half Rate
*High	121 – 300	Half Rate	Half Rate	Half Rate
*Severe	> 300	No Application	No Application	No Application

Rating	Soil Test P Index	Rocks >10" in diameter which cover >3% of the soils surface and <8% slope
*Low	0 – 65	Half Rate
*Moderate	66 – 120	Half Rate
*High	121 – 300	Half Rate
*Severe	> 300	No Application

* See Severe Rating - No Application listed below. Check for specific site characteristics which may deem the field inadequate for manure application from the list below.

Annual manure application rates are listed and explained below.

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Manure Application Rates

Full Rate – Not to exceed the Nitrogen requirement of the crop and the following P_2O_5 rates:

1. 200 lbs P_2O_5 per acre when surface applied.
2. 300 lbs P_2O_5 per acre when application is by sprinkler irrigation and managed to prevent runoff from the field.
3. 400 lbs P_2O_5 per acre if injected below the soil surface or surface applied and incorporated within 7 days.

Half Rate – Not to exceed the Nitrogen requirement of the crop and the following P_2O_5 rates:

1. 100 lbs P_2O_5 per acre when surface applied.
2. 150 lbs P_2O_5 per acre when application is by sprinkler irrigation and managed to prevent runoff from the field.
3. 200 lbs P_2O_5 per acre if injected below the soil surface or surface applied and incorporated within 7 days.

Split Application – Not to exceed the Nitrogen requirement of the crop

Application will be no more than $\frac{1}{2}$ the allowed P_2O_5 rate per application at least 30 days apart.

Severe Rating - No Manure Application

Do not apply manure or organic by-products in the following situations. Reference the Published County Soil Survey or Section II of the NRCS Field Office Technical Guide.

- Liquid animal manure will not be land applied within 500 feet of the corner of an occupied residence not owned or operated by the feeding operation.
- Liquid animal manure will not be applied within 300 feet of an existing public or private drinking water well.
- To areas within 100 feet of a perennial stream, pond, well, or sinkhole, unless an established buffer is present. The width of the buffer will be used as a set back distance for application purposes. The buffer must meet the requirements for design and maintenance established in the NRCS buffer standard and specification.
- To areas within 50 feet of an intermittent stream unless an established buffer is present. The width of the buffer will be used as a set back distance for application purposes. The buffer must meet the requirements for design and maintenance established in the NRCS buffer standard and specification.
- To fields with > 15% slope.
- To soils with less than 10 inches in depth to parent material.
- On soils that are frequently flooded.
- On soils that are frozen, snow covered, or water saturated (including periods of heavy rain when water ponding has occurred on the soil surface).
- On soils where the rock fragments in the surface layer are 3 to 10 inches in diameter and exceed 50% by weight.
- On soils where the rock fragments in the soil surface layer are > 10" in diameter and exceed 25% by weight.
- On soils where the rock fragments are > 10 inches in diameter which covers > 3% of the soil surface and the slope is > 8%.
- On areas eroding at levels greater than the soil loss tolerance, "T", from wind or water erosion or active gullies unless following a conservation plan that will reduce erosion below "T". Use current Oklahoma NRCS erosion prediction methods.
- On soils that are occasionally flooded. However, waste may be applied between June 20 and September 20 on soils classified as occasionally flooded. Manure may also be applied to soils classified as occasionally flooded between February 1 and April 20 if the area is established to cool season grasses 4 inches in height at the time of application. In no case will manure be applied when the soil is water saturated or when ponding has occurred on the soil surface after periods of heavy rain.

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STATE DEPT. OF AGRICULTURE

ANIMAL WASTE MANAGEMENT PLAN

**Bill Anderson
Poultry Production Operation**

Section 9- T20N R25E

Other property includes:

Section 8- T20N R25E

Section 16- T20N R25E

Section 17- T20N R25E

Delaware County, Oklahoma

ENTERED BY
FEB 08 2007
TONI REYNOLDS

**Agricultural Environmental Management Services
(AEEMS)**

**Oklahoma Department of Agriculture, Food and Forestry
PO Box 528804
Oklahoma City, OK 74105**

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ANIMAL WASTE MANAGEMENT PLAN

Bill Anderson

Plan Prepared in January 2008

Plan to be Revised January 2014

A. INTRODUCTION

Plants remove from the soil four to ten times as much nitrogen as phosphorus. Consequently a significant buildup of phosphorus in the soil can take place over a period of time. Much of the build up can be lost through runoff, which greatly reduces the quality of water downstream. Due to these water quality concerns, future land application of poultry litter will be based upon the phosphorus content in the soil and the amount of phosphorus in the chicken litter applied. The law requires that the Natural Resources Conservation Service (NRCS) recommendations for litter application rates be followed. NRCS recommends the application maximum of 200 lbs. of phosphorus per acre per year if the soil test shows a phosphorus index below 250. If the soil tests phosphorus index is between 250 and 400 then the rate applications are reduced by one-half. If the phosphorus index is above 400 then no litter is to be applied. If the maximum amount of litter that can be applied does not supply sufficient nitrogen for the desired production then nitrogen from other sources can be applied (ex: ammonium nitrate). About 50 lbs of nitrogen is needed to produce one ton of bermuda grass and about 60 lbs is needed to produce one ton of fescue.

B. DESCRIPTION OF OPERATION

This waste management plan includes the production, handling, and distribution of waste and litter from two breeder houses. These houses are each 40 feet wide and 500 feet long. This includes an egg room in each house. They are located in Section 9, T.20N, R.25E., Delaware County, Oklahoma. Each flock of 18,000 birds (including roosters) is kept 10 to 11 months. This allows for clean out and preparation for the next annual flock. The bedding material consisting of wood shavings is placed in a strip through the center of the house from end to end. Total average yearly waste and litter production is estimated to be 260 tons. The time of clean out varies each year. If it should become necessary to store litter outside it will be protected from outside water and there will be no runoff from the stockpile. There are 198 acres in this property of which about 140 acres (owner's estimate) are suitable for receiving litter.

C. APPLICATION RATES

Fields are located in Section 8, 9, 16 and 17 T.20, R.25E., Delaware County, Oklahoma

Nutrient Content:

Due to miscommunication with other parties involved, no litter sample analysis is available. An average hen analysis is:

N-50 lbs. P₂O₅-55 lbs. K₂O-30 lbs.

The litter will be tested before any is removed from the houses. Since none of the litter is used on this property, no soil tests were done. Soil tests will be done before any litter is used on this farm.

In the event litter is used on this farm, do not spread within 50 to 100 feet of ponds, streams or water wells.

D. DEAD BIRD DISPOSAL

Birds from normal death loss are disposed of in an incinerator. The poultry company picks up catastrophic losses.

E. WASTE UTILIZATION GUIDELINES

In the event litter is used on this property use the following waste utilization guidelines:

1. All waste will be applied in accordance with all state and local laws and ordinances.
2. All waste applications will be timed to minimize pollution.
3. Any one of the following conditions will prohibit the surface application of litter:
 - a. High velocity wind is toward a populated area.
 - b. There is high probability of a runoff producing rainfall.
 - c. The ground is frozen.
 - d. Saturated conditions exist.
 - e. The Phosphorus Index is 300 or greater in nutrient limited watersheds.
 - f. The Phosphorus Index is 400 or greater in non-nutrient limited watersheds.
 - g. Frequently flooded areas.
 - h. Areas where there will be discharge from the application site.
 - i. Severely eroding areas.
 - j. Soils are less than 10 inches deep.
 - k. Slopes are greater than 15% (fifteen feet rise or fall in 100 feet).
 - l. Very stony areas.

F. BEST MANAGEMENT PRACTICES

In the event litter is used on this property use the following best management practices:

1. Apply litter not to exceed amounts given in the waste management plan or a revised recommendation based on new soil and litter tests.
2. Obtain new soil and litter test every year. Soil tests are required only in fields where litter is to be applied.
3. Secure enough soil tests to adequately represent the conditions of your farm. Generally one composite sample is needed for each 40 acres where litter is to be applied.
4. Maintain a good growth of grass at all times. Grass should not be less than 4 inches tall. This reduces runoff, erosion, and nutrient loss.
5. Spread litter during growth season of dominant plants.
6. Control weeds and brush to maintain a good stand of grass.
7. Do not apply litter within 50 to 100 feet of streams, ponds, and water wells. Buffer strips should be maintained in these areas.
8. On slopes of 8 to 15%, use one-half the normal prescribed rate of litter.

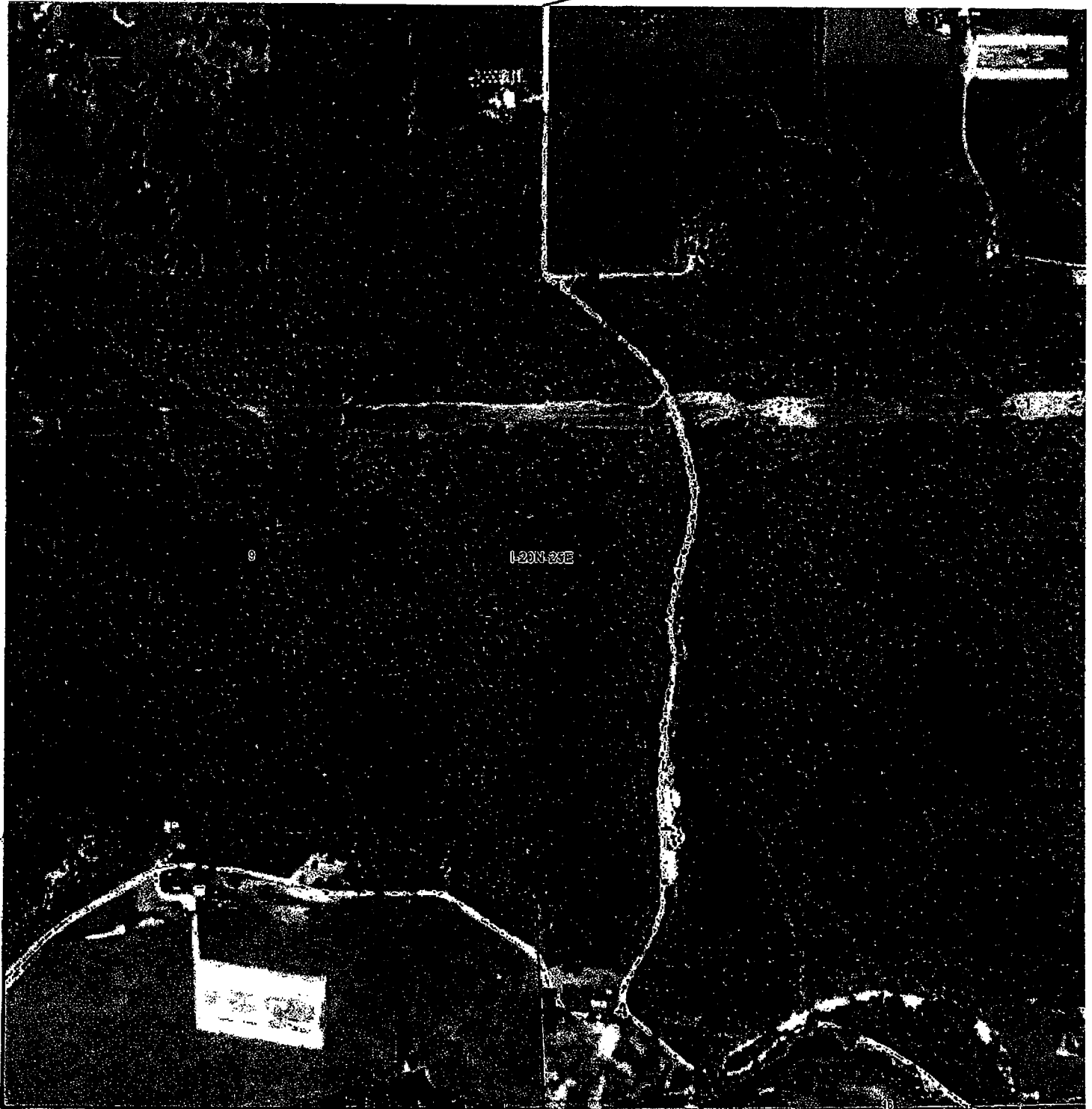
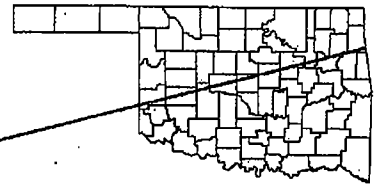
G. ENVIRONMENTAL STATEMENT

There are ponds and intermittent streams on this property that require special precautions when spreading litter (See statement F.7). Some areas are seasonally wet which limits litter applications to certain times of the year. The small areas that are subject to frequent flooding are still in woodland. This property is in an area of highly vulnerable groundwater.

H. ADDITIONAL INFORMATION

1. The dominant grass is bermuda grass.
2. Owner sometimes does his own clean out and at other times hires it done.
3. Keep records of amount of litter produced, date of total clean out, and where litter is applied if not sold.
4. Any person taking litter from this property must be given a copy of a current litter test.
5. Litter and soil testing should be done about one month before time of total clean out. This will allow adequate time for test results to be returned and used in determining application rates.
6. If assistance is needed, please call Ed Abernathy at (918) 647-3094.

S9 T20N R25E
Delaware County, OK



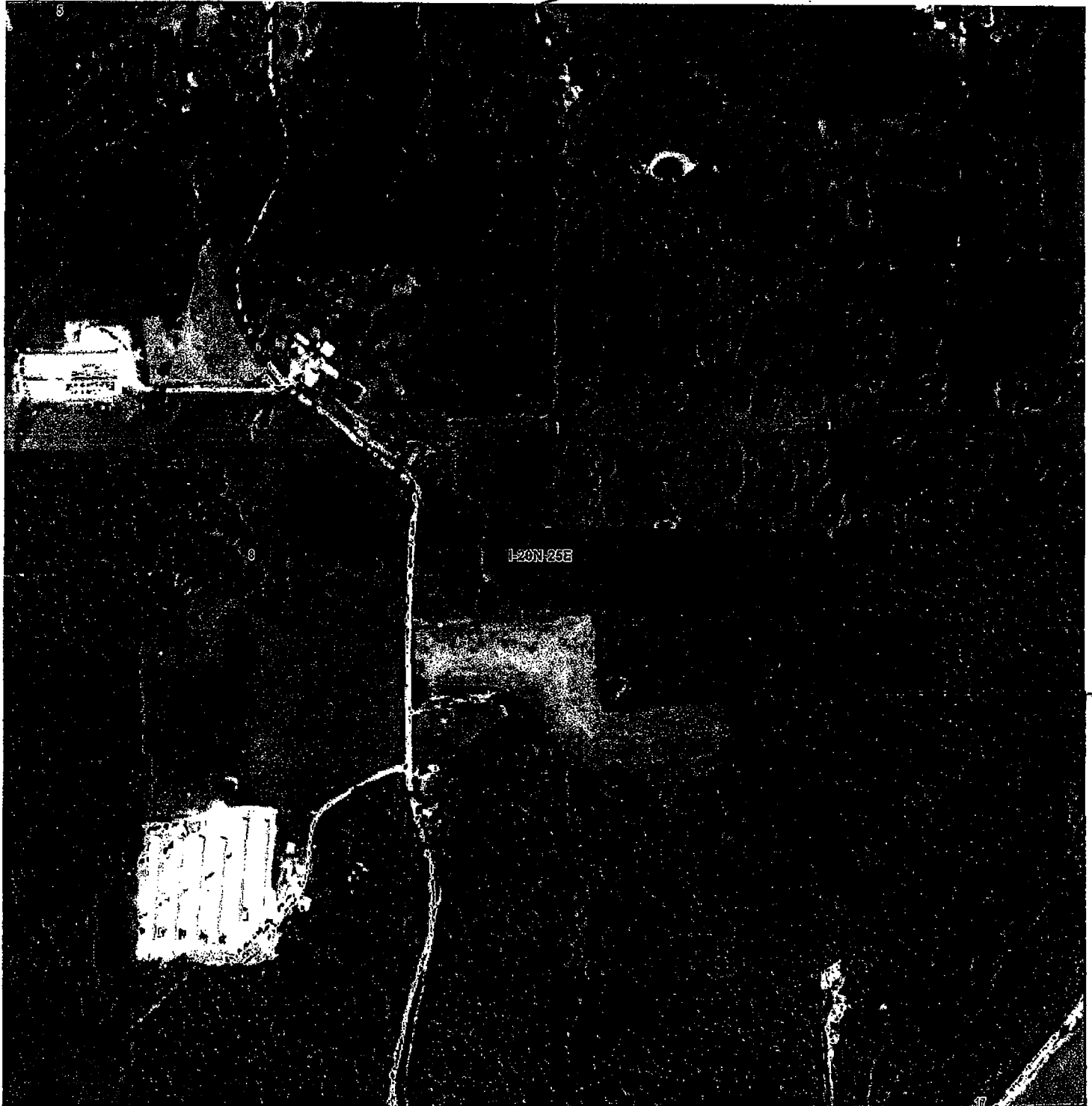
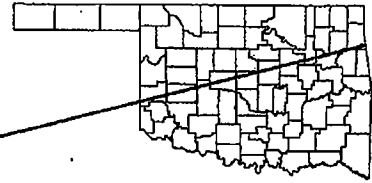
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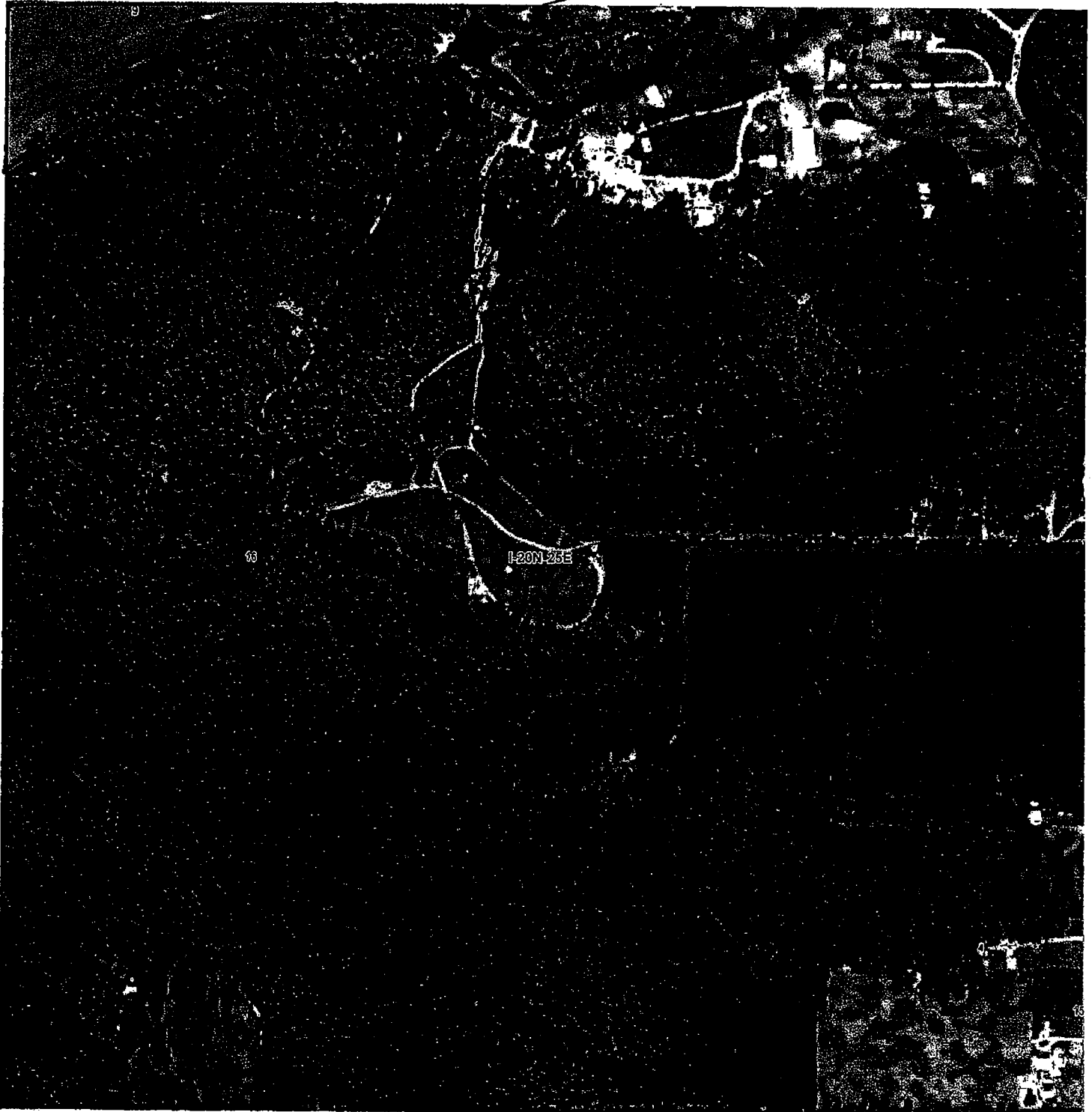
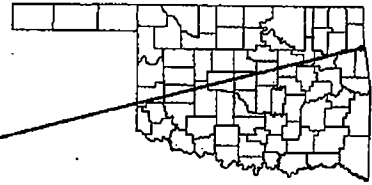
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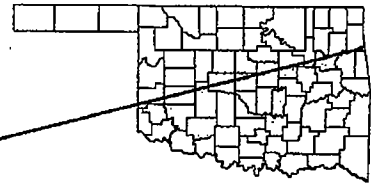
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S16 T20N R25E
Delaware County, OK



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Delaware County, OK



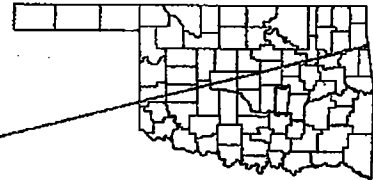
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S9 T20N R25E **Delaware County, OK**



Section 9

Map Symbol

CIF

CkD

SaA

SaB

SgB

SgD

Soil Name

Clarksville stony silt loam, 20 to 50 percent slopes

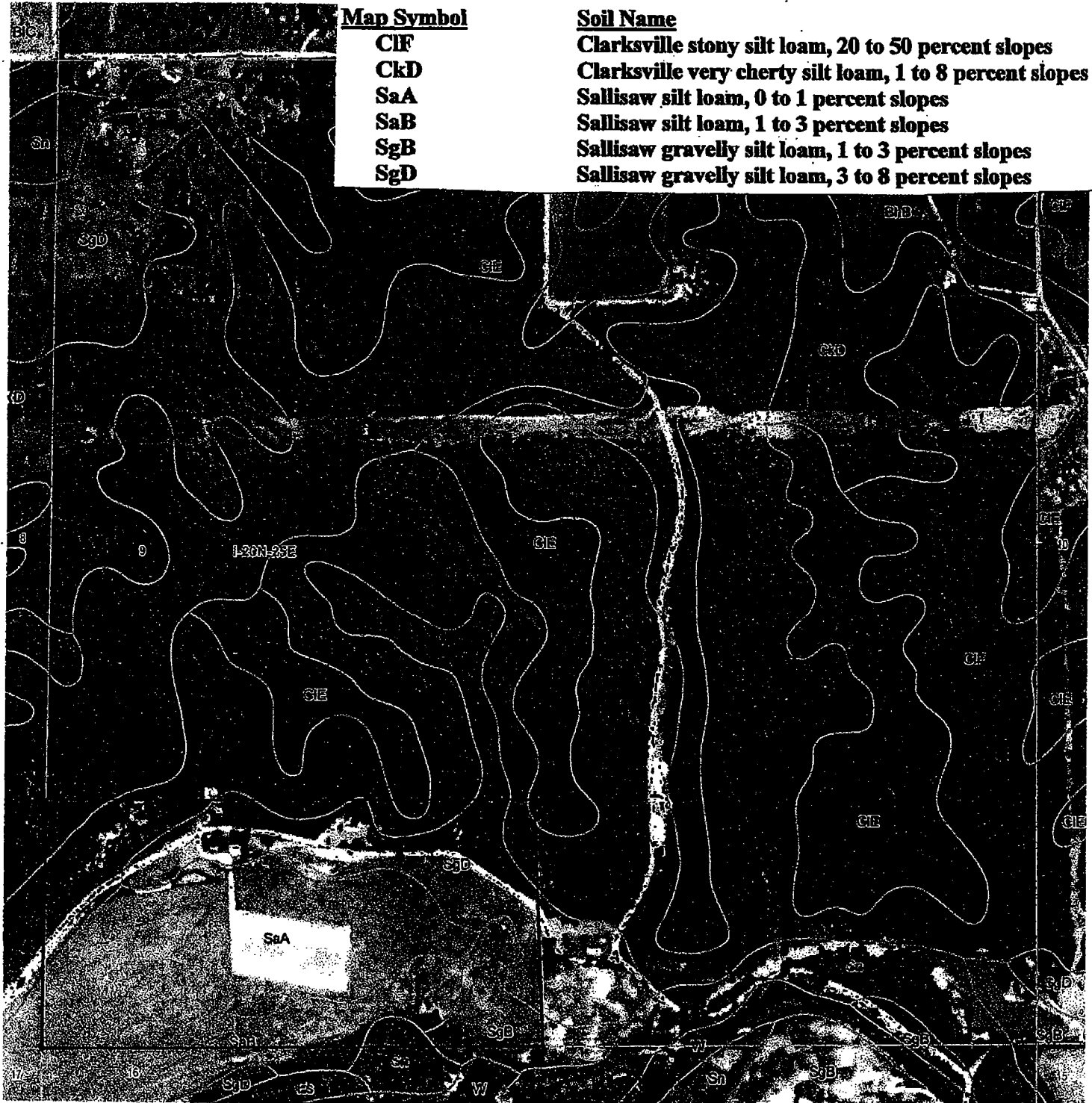
Clarksville very cherty silt loam, 1 to 8 percent slopes

Sallisaw silt loam, 0 to 1 percent slopes

Sallisaw silt loam, 1 to 3 percent slopes

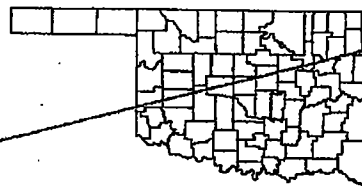
Sallisaw gravelly silt loam, 1 to 3 percent slopes

Sallisaw gravelly silt loam, 3 to 8 percent slopes



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S8 T20N R25E Delaware County, OK

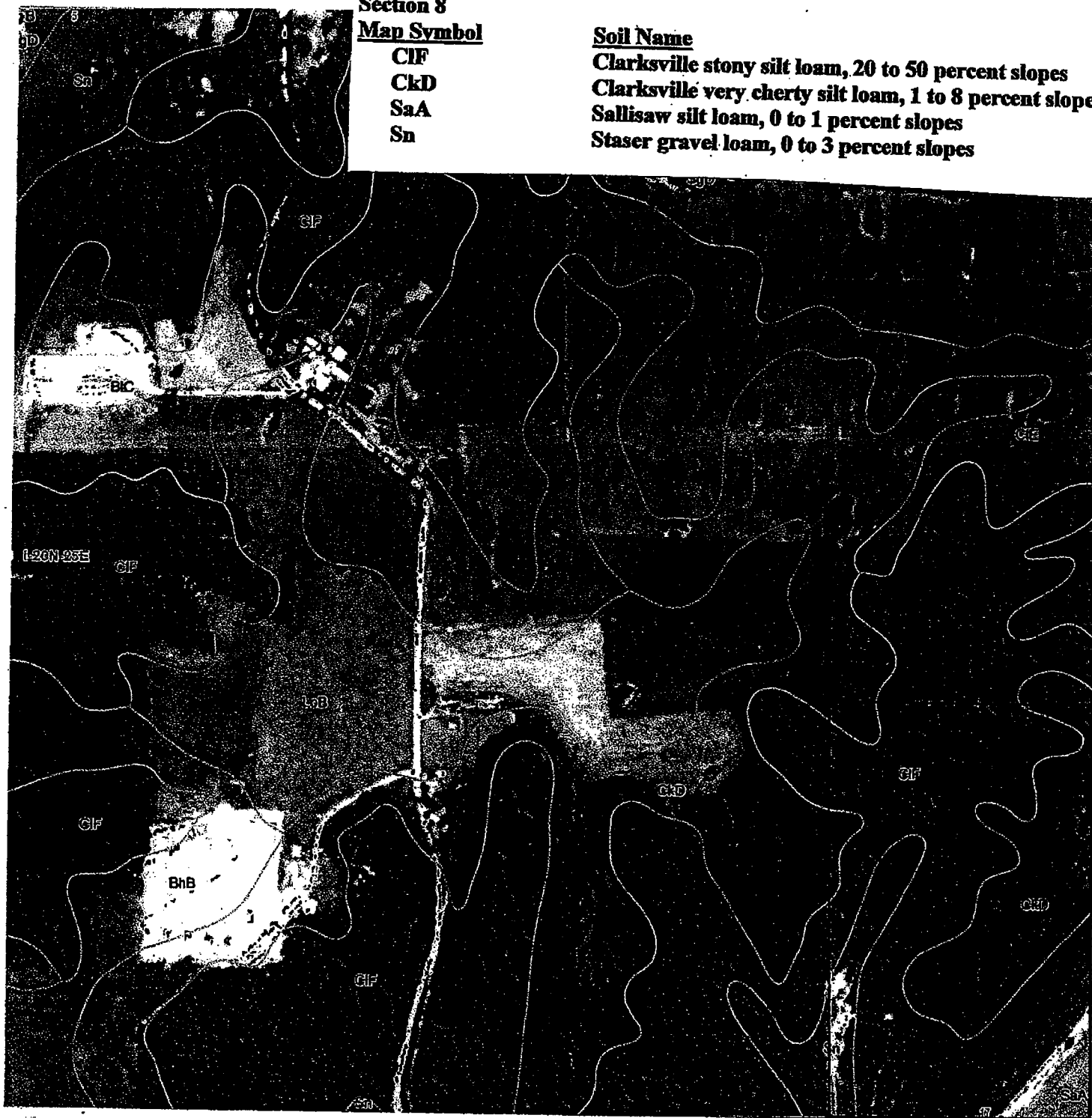


Section 8 Map Symbol

CIF
CkD
SaA
Sn

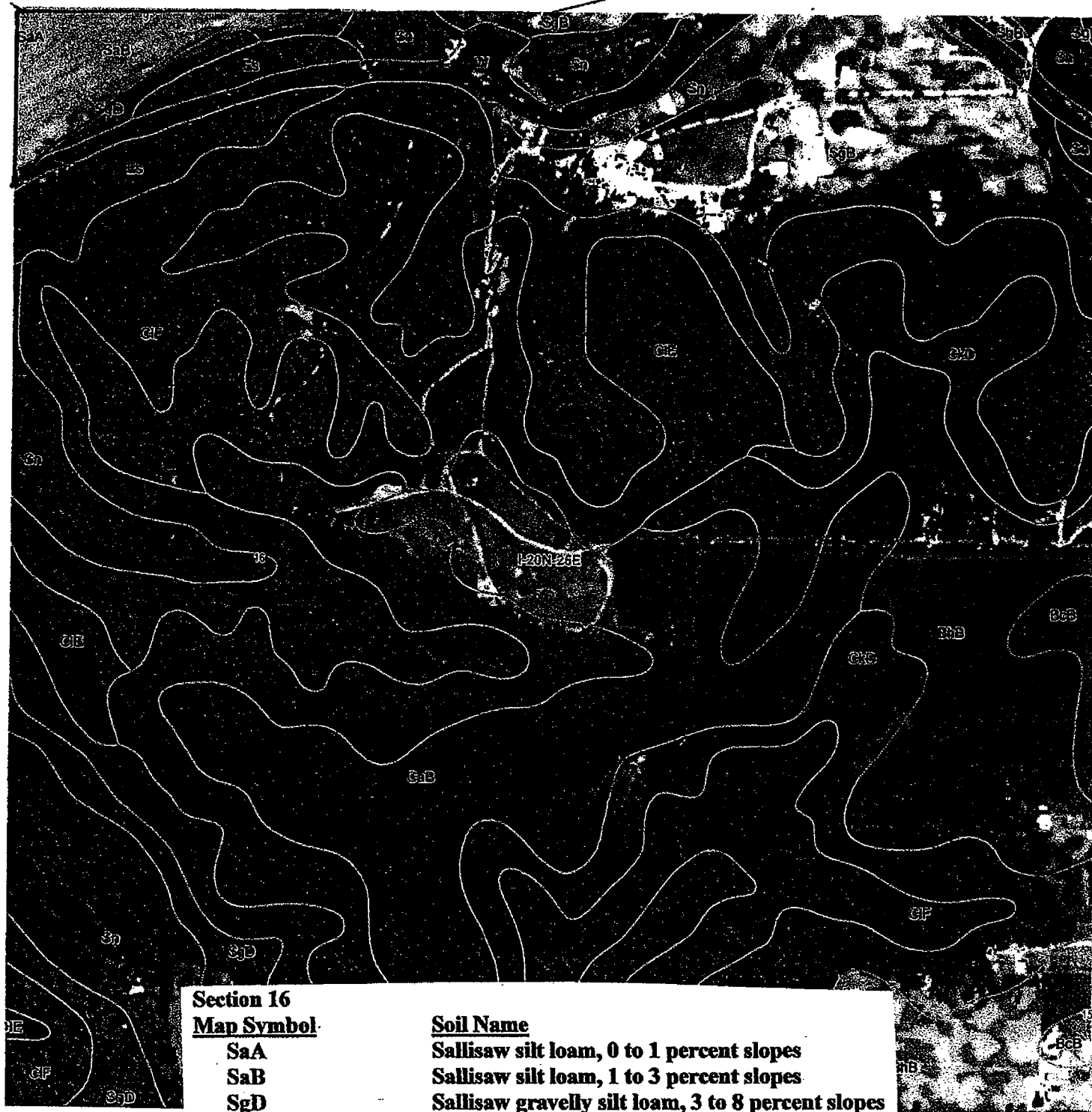
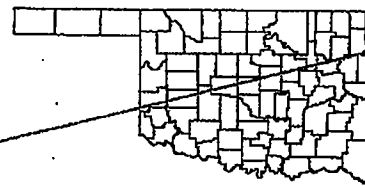
Soil Name

Clarksville stony silt loam, 20 to 50 percent slopes
Clarksville very cherty silt loam, 1 to 8 percent slopes
Sallisaw silt loam, 0 to 1 percent slopes
Staser gravel loam, 0 to 3 percent slopes



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S16 T20N R25E Delaware County, OK



Section 16

Map Symbol

SaA

SaB

SgD

Soil Name

Sallisaw silt loam, 0 to 1 percent slopes

Sallisaw silt loam, 1 to 3 percent slopes

Sallisaw gravelly silt loam, 3 to 8 percent slopes

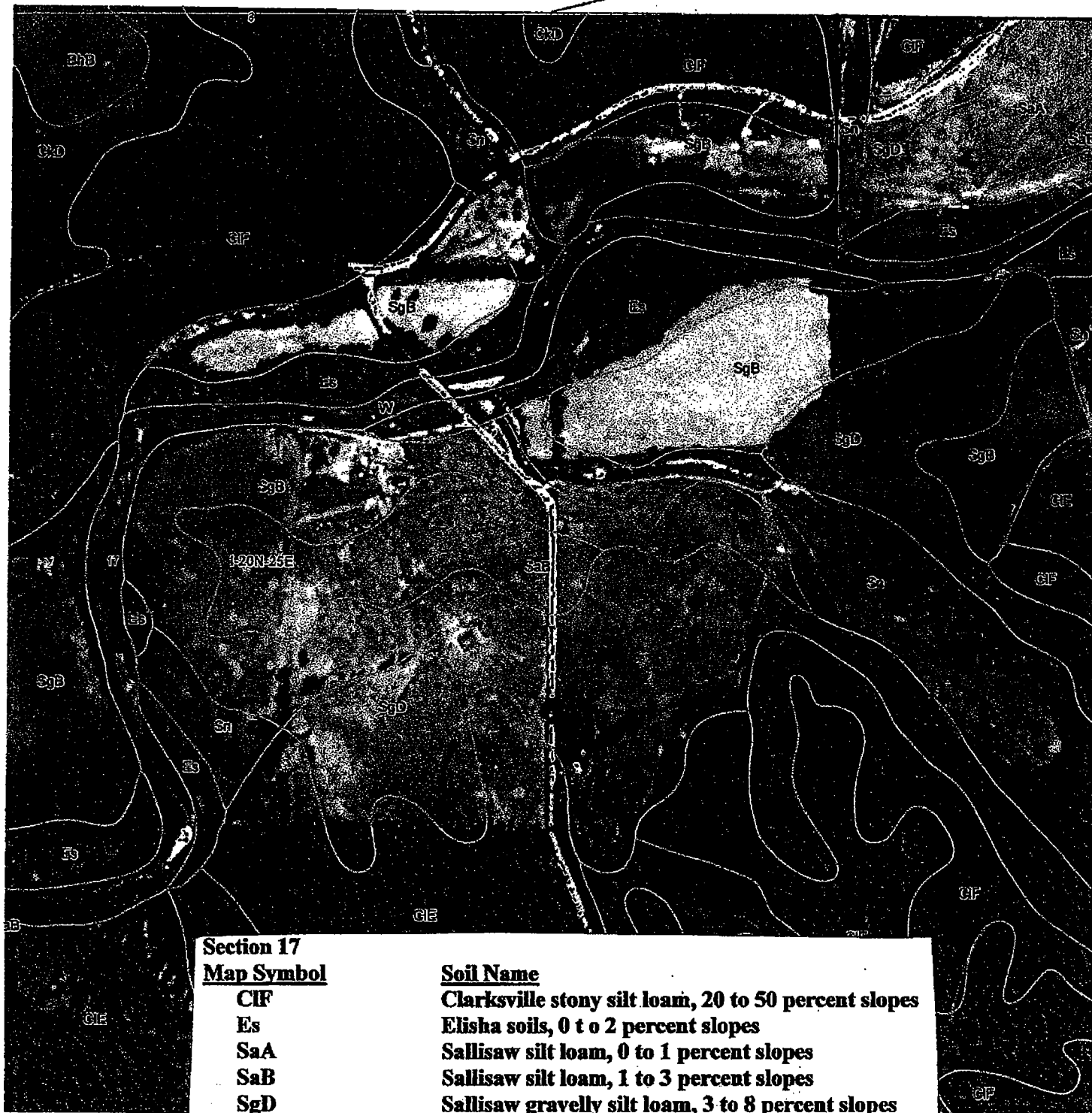
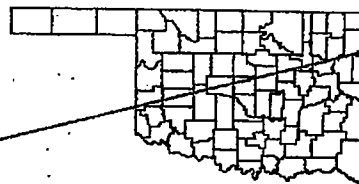
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S17 T20N R25E Delaware County, OK



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Map Symbol	SOIL NAME AND DESCRIPTION
CIF	Clarksville stony silt loam, 20 to 50 percent slopes This is a deep, well drained to excessively drained soil with a stony, silt loam surface layer and a silty clay loam subsoil. It is low in natural fertility, organic matter content and available water capacity.
CkD	Clarksville very cherty silt loam, 1 to 8 percent slopes This is a deep soil with a very cherty silt loam surface layer and a very cherty silty clay loam subsoil. Natural fertility, organic matter content, and available water capacity are medium to low. The soil is suited for tame pasture.
Es	Elisha soils (0 to 2 percent slopes) This is a deep, very gravelly, loamy soil that is subject to frequent to flooding. This soil is high in natural fertility and organic matter content, It is low in available water capacity.
SaA	Sallisaw silt loam, 0 to 1 percent slopes This is a deep soil with a silt loam surface layer and a silty clay loam subsoil. It is medium in natural fertility organic matter content and available water capacity.
SaB	Sallisaw silt loam, 1 to 3 percent slopes This is a deep well drained soil with a silt loam surface layer and a silty clay loam subsoil. It is medium in natural fertility, organic matter content and available water capacity.
SgB	Sallisaw gravelly silt loam, 1 to 3 percent slopes This is a deep well drained soil with a gravelly silt loam surface layer and a gravelly silty clay loam subsoil. It is medium in natural fertility, organic matter content and available with capacity.

SgD

Sallisaw gravelly silt loam, 3 to 8 percent slopes

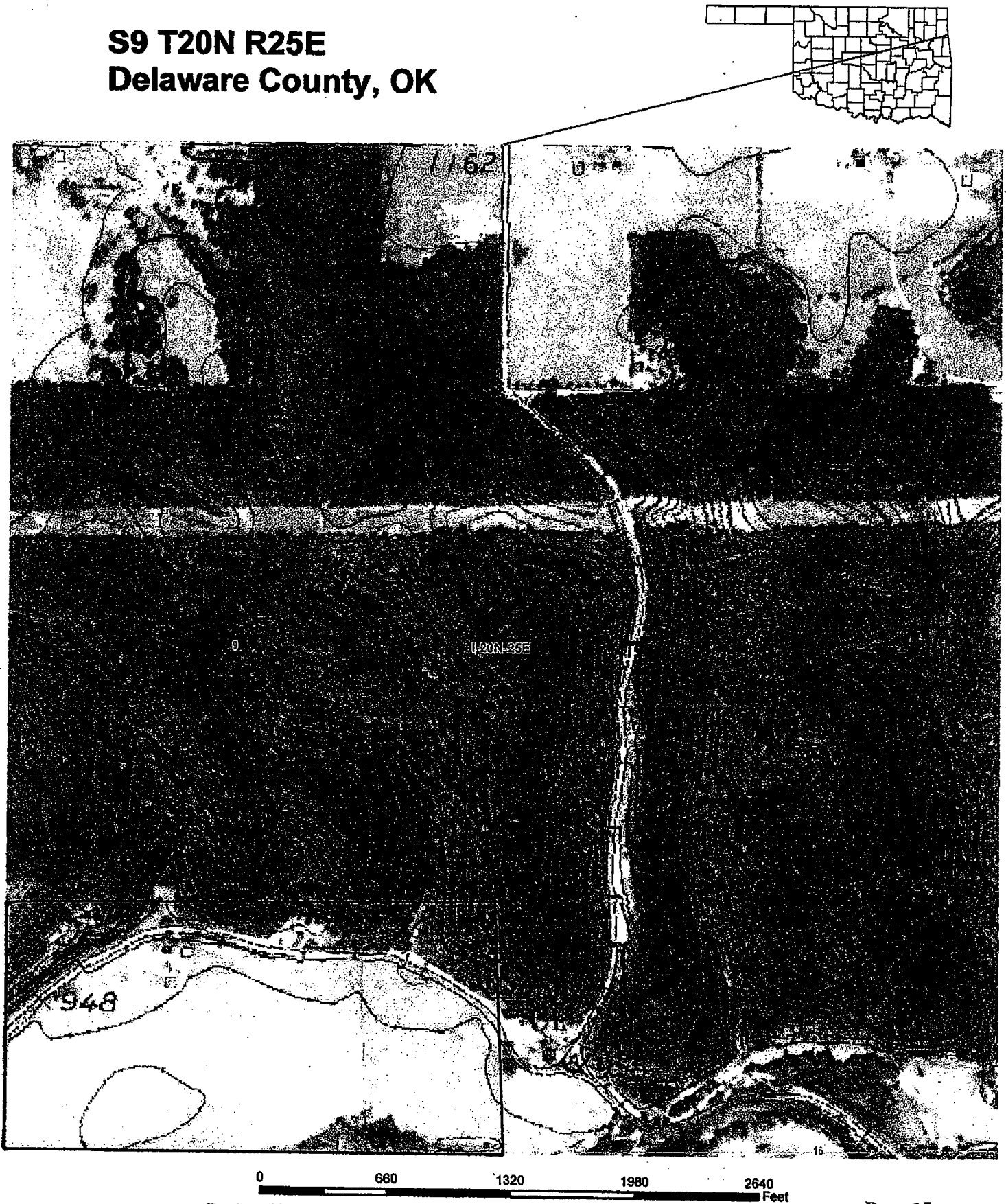
This is a deep well drained soil with a gravelly silt loam surface layer and a gravelly silty clay loam subsoil. It is medium in natural fertility, organic matter content, and available water capacity.

Sn

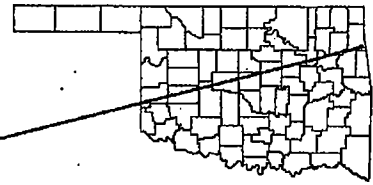
Staser gravel loam, 0 to 3 percent slopes

This is a deep well drained soil that is gravelly loam throughout. It is high in natural fertility and organic matter content. The available water capacity is low.

S9 T20N R25E
Delaware County, OK

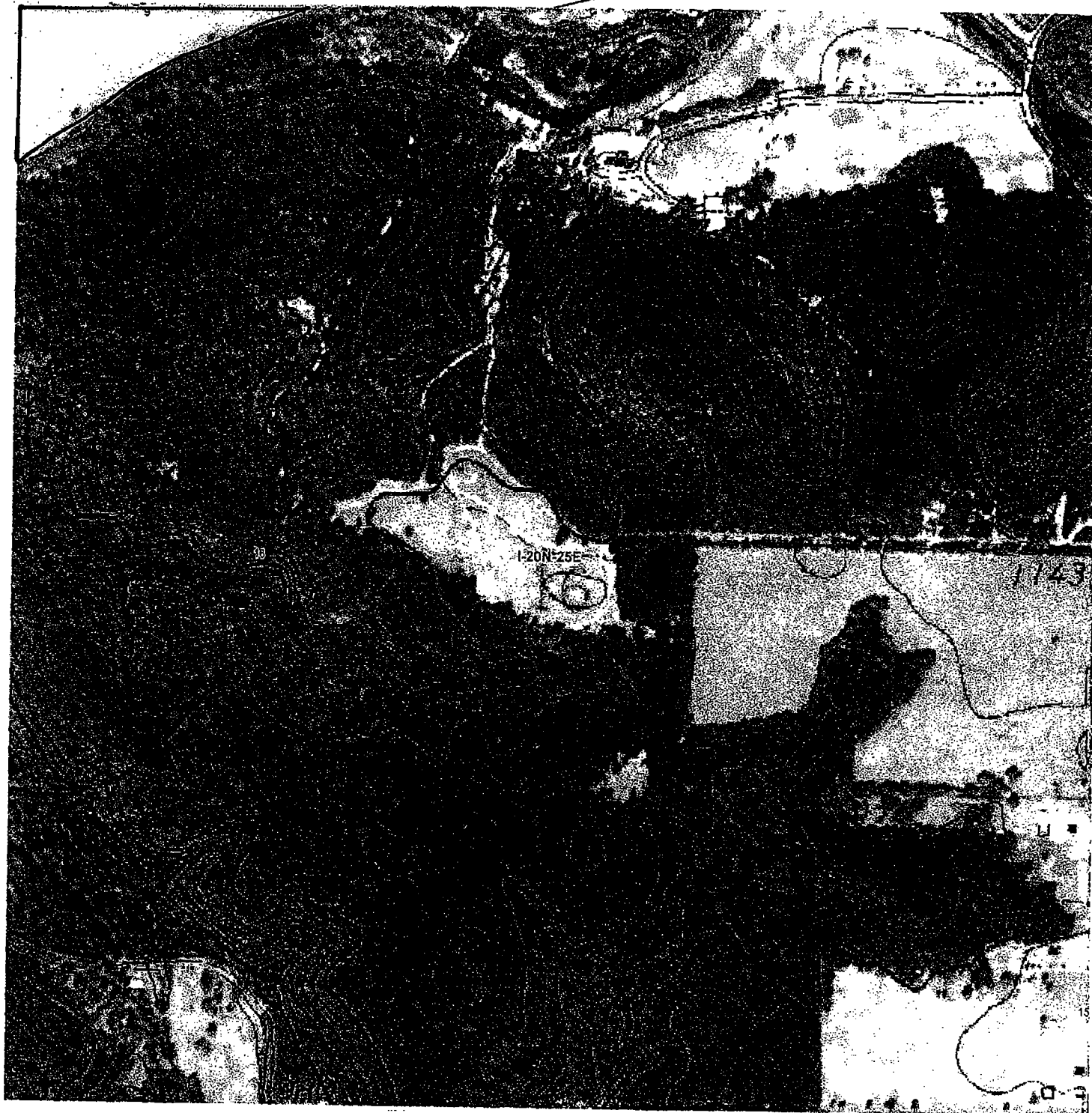
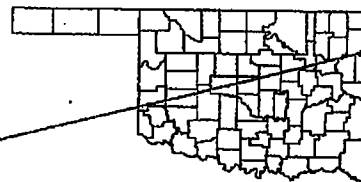


**S8 T20N R25E
Delaware County, OK**



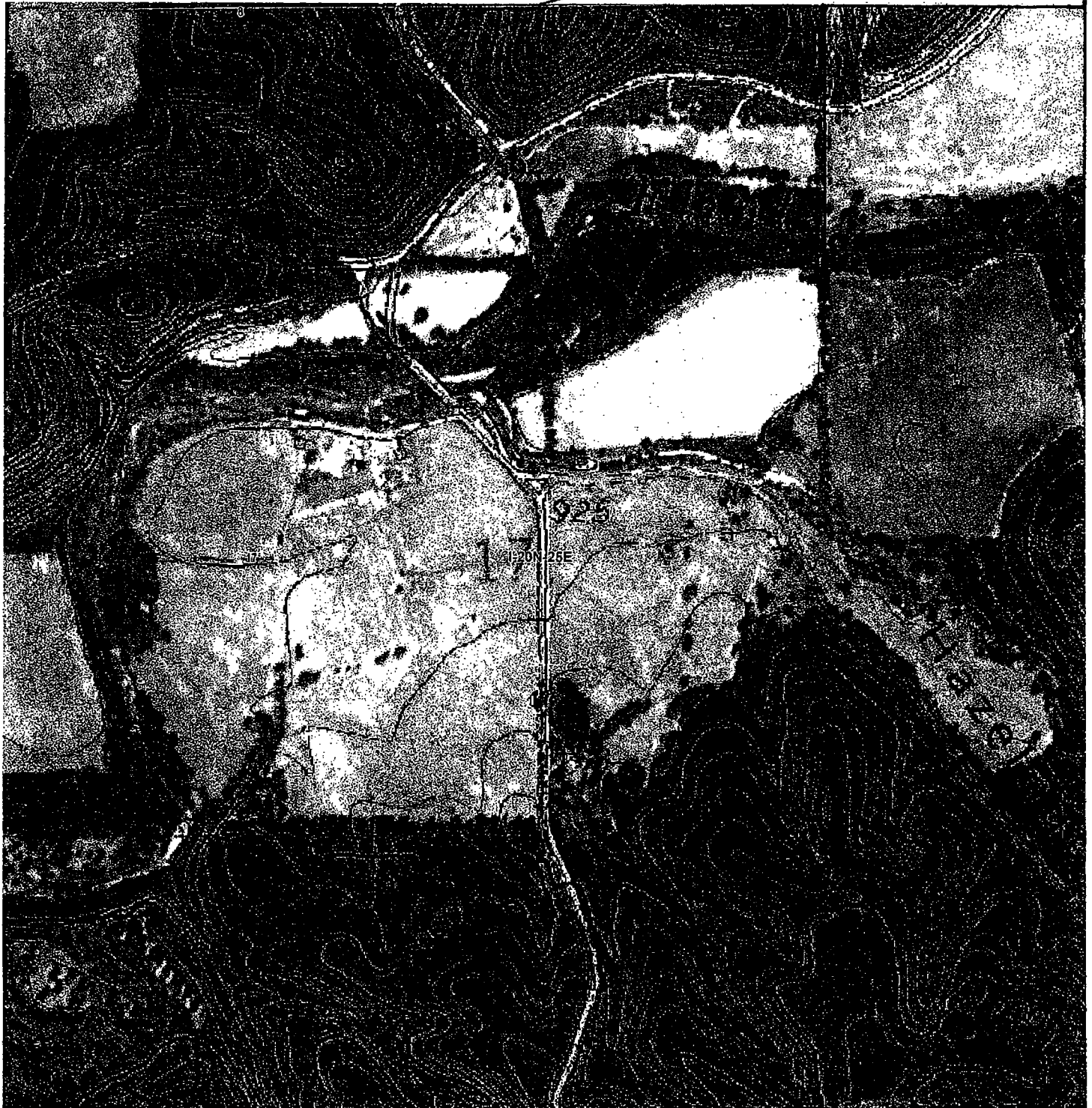
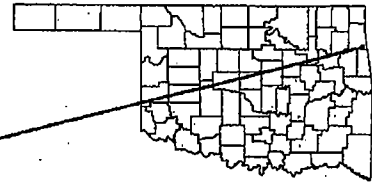
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**S16 T20N R25E
Delaware County, OK**



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**S17 T20N R25E
Delaware County, OK**

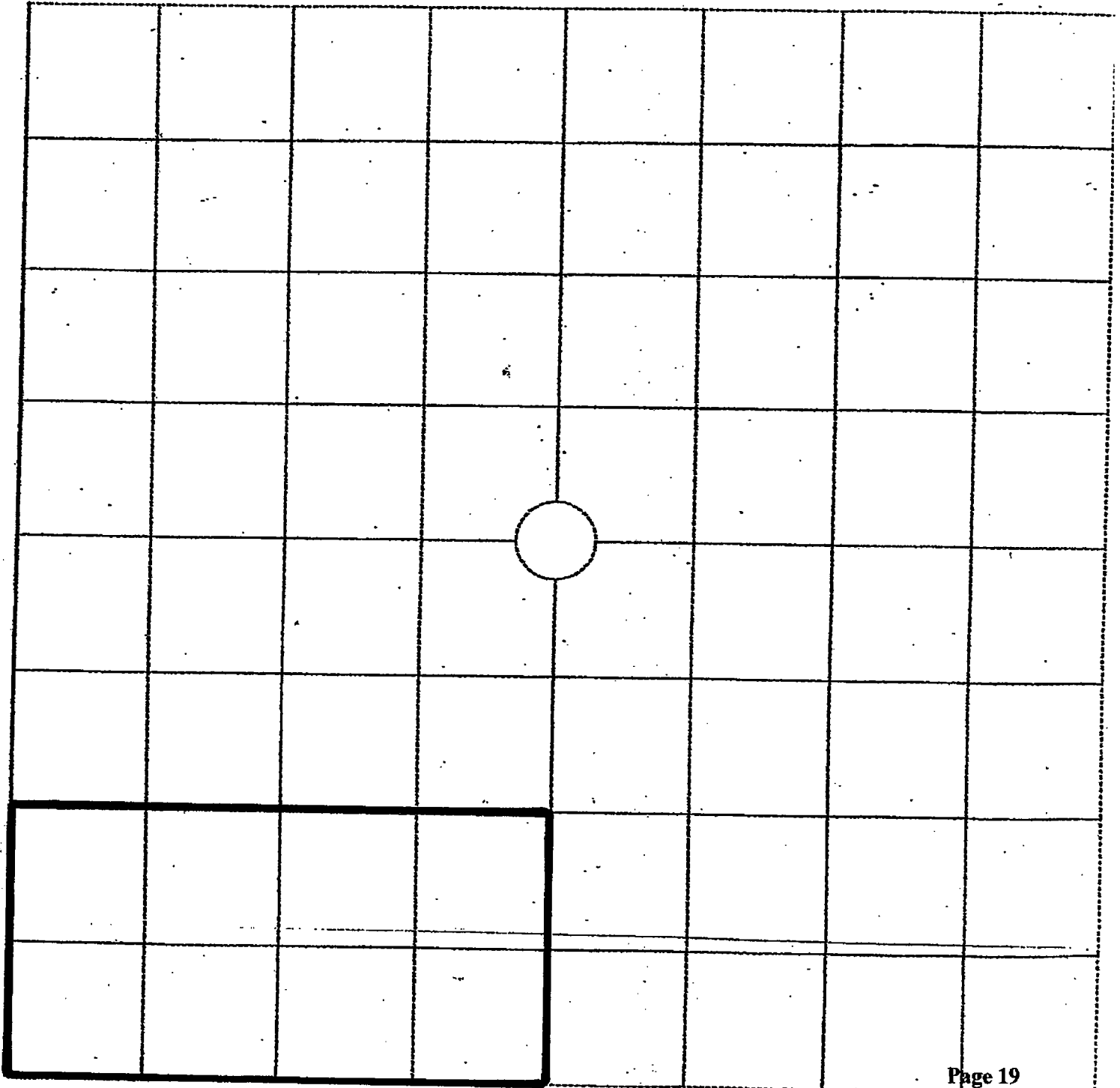


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OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, & FORESTRY NORTH
AGRICULTURAL ENVIRONMENTAL MANAGEMENT SERVICES
Legal Location Platt

Facility Name Bill Anderson
Legal Desc. , , Sec 9 T30N R25E Mer.
County Delaware County, Oklahoma

Size:
10 acre
Scale:
1" = 660'



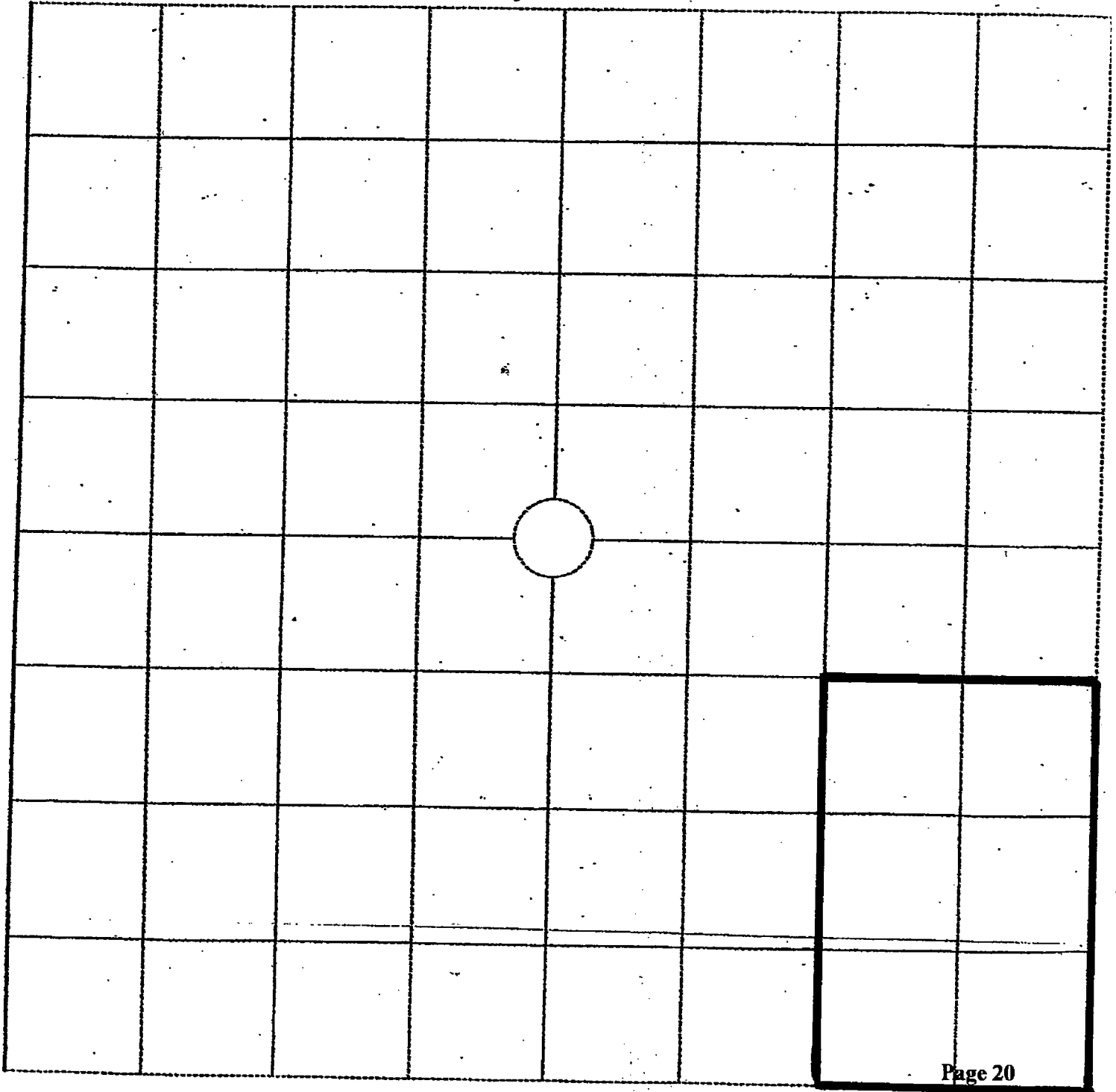
OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, & FORESTRY NORTH
AGRICULTURAL ENVIRONMENTAL MANAGEMENT SERVICES

Legal Location Platt



Facility Name Bill Anderson
Legal Desc. , , Sec 8 T 20N R 25E Mer.
County Delaware County, Oklahoma

Size:
10 acre
Scale:
1" = 660'



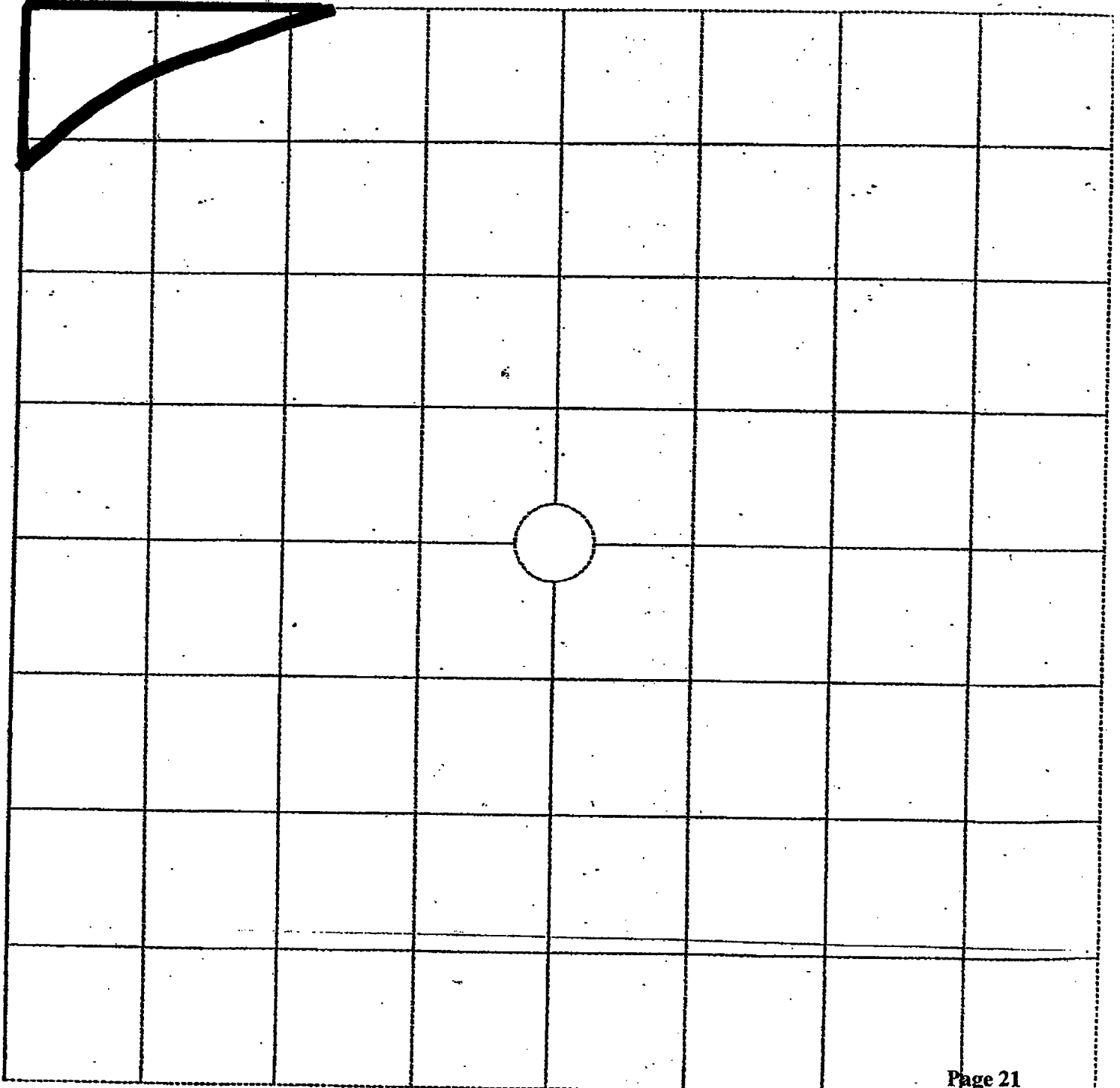
OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, & FORESTRY
AGRICULTURAL ENVIRONMENTAL MANAGEMENT SERVICES

Legal Location Platt



Facility Name Bill Anderson
Legal Desc. , , Sec 16 T 20N R 25E Mer.
County Delaware County, Oklahoma

Size:
10 acre
Scale:
1" = 660'



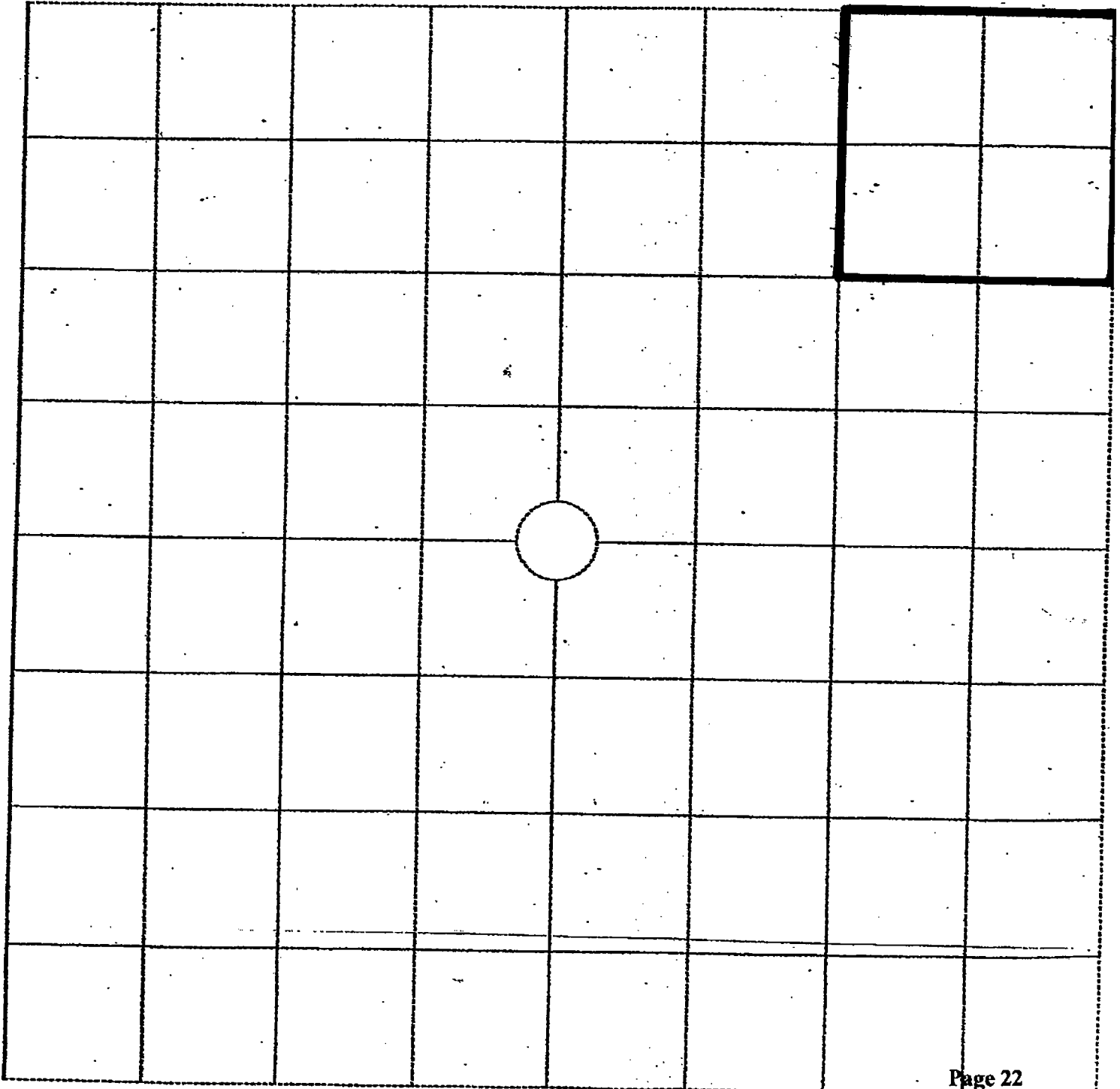
OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, & FORESTRY NORTH
AGRICULTURAL ENVIRONMENTAL MANAGEMENT SERVICES

Legal Location Platt

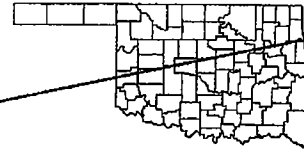


Facility Name Bill Anderson
Legal Desc. , , Sec 17 T 20N R 25E Mer.
County Delaware County, Oklahoma

Size:
10 acre
Scale:
1" = 660'



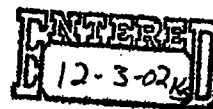
S30 T20N R25E Delaware County, OK



0 660 1320 1980 2640 Feet

Produced by the Oklahoma Department of Agriculture Geographic Information System.

Amici Add. 117



ANIMAL WASTE MANAGEMENT PLAN
BILL R. ANDERSON
POULTRY PRODUCTION OPERATION
Sections 30 & 33, T20N, R25E
DELAWARE COUNTY, OKLAHOMA



RECEIVED

DEC 02 2002

Water Quality
STATE DEPT. OF AGRICULTURE



WATER QUALITY SERVICES DIVISION
OKLAHOMA DEPARTMENT OF AGRICULTURE
P.O. Box 528804, Oklahoma City, OK. 73105

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ANIMAL WASTE MANAGEMENT PLAN
BILL R. ANDERSON
POULTRY PRODUCTION OPERATION
DELAWARE COUNTY, OKLAHOMA
Prepared in November 2002

A - INTRODUCTION

Plants remove from the soil 4 to 10 times as much nitrogen as phosphorus. Consequently, a significant build up of phosphorus in the soil can take place over a period of time. Much of the build up can be lost through runoff, which greatly reduces the quality of water downstream. Due to these water quality concerns, future land application of poultry litter will be based upon the phosphorus content in the soil and the amount of phosphorus in the chicken litter to be applied. The law requires that the Natural Resources Conservation Service recommendations for litter application rates be followed. NRCS recommends the application of a maximum of 200 lbs. of phosphorus per acre per year if the soil test shows a phosphorus index below 250. If the soil test phosphorus index is above 250 then rate applications are adjusted downward accordingly. If the maximum amount of litter that can be applied does not supply sufficient nitrogen for the desired production then nitrogen from other sources can be applied (ex. ammonium nitrate). About 50 lbs. of nitrogen is needed to produce a ton of bermuda grass and about 60 lbs is needed to produce a ton of fescue. Based on current litter and soil tests, and with recommended litter applications, potassium will be adequate for plant growth.

B - DESCRIPTION OF OPERATION

This waste management plan includes the production, handling, and distribution of waste and litter from four pullet houses. These houses are each 40 feet wide and 300 feet long. They are located in Section 30, T20N, R25E, Delaware County, Oklahoma. Each batch of about 18,600 pullets (plus about 1500 roosters) is kept approximately 5 months. There is about a 3-week period between batches to allow for cleanout and preparation for the next batch of pullets. The average is 2 batches of birds per year. Total waste and litter production is estimated to be 170 tons. The waste is accumulated on wood shavings bedding material and is completely removed 2 times per year. The present clean out schedule is November and June. The litter is spread on the surface of the ground, when removed, if conditions are right for spreading. Otherwise, it is stored and protected from outside water. There will be no runoff from the stockpile. There are about 40 acres in this property. However the owner has access to an additional approximately 275 acres.

As shown on the aerial photograph, the 40 acres, where the pullet houses are, is separated from the other property by a dash line. This total acreage above receives litter from poultry houses owned by the Anderson's daughter.

C – APPLICATION RATES

Field 1: Section 33, T20N, R25E

Field 2: Section 30, T20N, R25E

(See attached aerial photographs for specific location of each field).

Nutrient Content

According to the latest (9/02) litter test, each ton of litter contains:

N – 43 lbs. P205 – 60 lbs. K20 – 48 lbs.

Soil test results (7&8/02)

Field No.	N03	P Index	K Index
1	6 lbs.	54 lbs.	232 lbs.
2	4 lbs.	27 lbs.	294 lbs.

Soil test P Index is below 250 in both fields. Litter can be applied at the full rate. The bottomland area shown in blue on the soils map can only receive litter between June 20 and September 20 or if there is a 4-inch growth of fescue litter can be applied between February 1 and April 20.

200 lbs. P205 divided by 60 lbs. P205 per/ton = 3.3 tons of litter per acre per year. This 3.3 tons will supply enough nitrogen to produce about 2 tons of bermuda grass or about 1.7 tons of fescue. (Fertilizer is 70 percent effective the first year).

The following lime applications are recommended.

Field 1 – 1.4 tons ECCE lime per acre

Field 2 – 1.2 tons ECCE lime per acre

Do not apply litter adjacent to ponds, streams, or water wells.

Application Summary

Litter production from 4 pullet houses = 170 tons. 170 tons divided by 3.3 tons per acre = 52 acres that can be covered at the full rate. This will only cover a portion of the available land. However some of the land is receiving litter from other sources. Caution should be taken not to put litter on the same land twice in one year. Adequate and timely soil sampling is very important where litter is being supplied from two sources. (See Item F. 2 & 3).

D - DEAD BIRD DISPOSAL

Birds from normal death loss are disposed of in an incinerator.

Birds from catastrophic losses are disposed of in a dug pit as approved by the appropriate poultry inspector. An alternate method is infield composting.

E - WASTE UTILIZATION GUIDELINES

- 1. All waste will be applied in accordance with all state and local laws and ordinances.**
- 2. All waste applications will be timed to minimize pollution.**

Any one of the following conditions will prohibit the surface application of litter.

- a. High velocity wind is toward a populated area.**
 - b. There is a high probability of a runoff producing rainfall.**
 - c. The ground is frozen.**
 - d. Saturated soil condition exists.**
- 3. Discharge or runoff from waste application sites is prohibited.**
 - 4. Spread litter during growing season of dominant plants.**
 - 5. Do not apply to actively eroding areas.**
 - 6. Do not apply on shallow soils (less than 10 inches deep), on slopes greater than 15 percent, or on stony areas.**

F - BEST MANAGEMENT PRACTICES

- 1. Apply litter not to exceed amounts given in this waste management plan or a revised recommendation based on new soil and litter tests.**
- 2. Soil and litter are to be tested every year.**
- 3. Secure enough soil tests to adequately represent the conditions on your farm. Generally one composite soil sample is needed for each 40 acres where litter is to be applied.**
- 4. Maintain a good growth of grass at all times. Grass should not be less than four inches tall. This reduces runoff, erosion, and nutrient loss.**
- 5. Control weeds and brush to maintain a good stand of grass.**
- 6. Do not apply litter within 50 to 100 feet of streams, ponds, and water wells. Buffer strips should be maintained along these areas.**
- 7. On slopes of 8 to 15 percent, use one-half the normal prescribed rate of litter.**

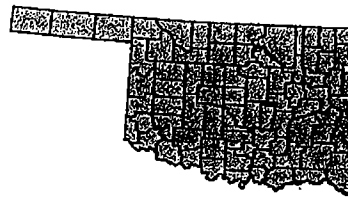
G - ENVIRONMENTAL ASSESSMENT

There are ponds and intermittent streams on this property that require special precautions when spreading litter. (See Item F. 6). Some areas are seasonally wet which limits litter application to certain times of the year. The steep and/or stony areas are still in timber.

H - ADDITIONAL INFORMATION

- 1. The dominant grasses are bermuda grass and fescue.**
- 2. The present clean out schedule is November and June.**
- 3. Litter sampling after each batch of chickens is not required. One sample per year is adequate. Additional sampling can be done for your own information.**
- 4. Owner should keep records of time of clean out, tons of litter produced and who receives the litter in the event any should be removed from this farm.**
- 5. The amount of litter produced was taken from the owner's records.**

S30 T20N R25E Delaware County, OK



0 660 1320 1980 2640 Feet

Produced by the Oklahoma Department of Agriculture Geographic Information System.

Page 6

S.T. - Soil Test

Amici Add. 124

S33 T20N R25E Delaware & Adair Counties, OK



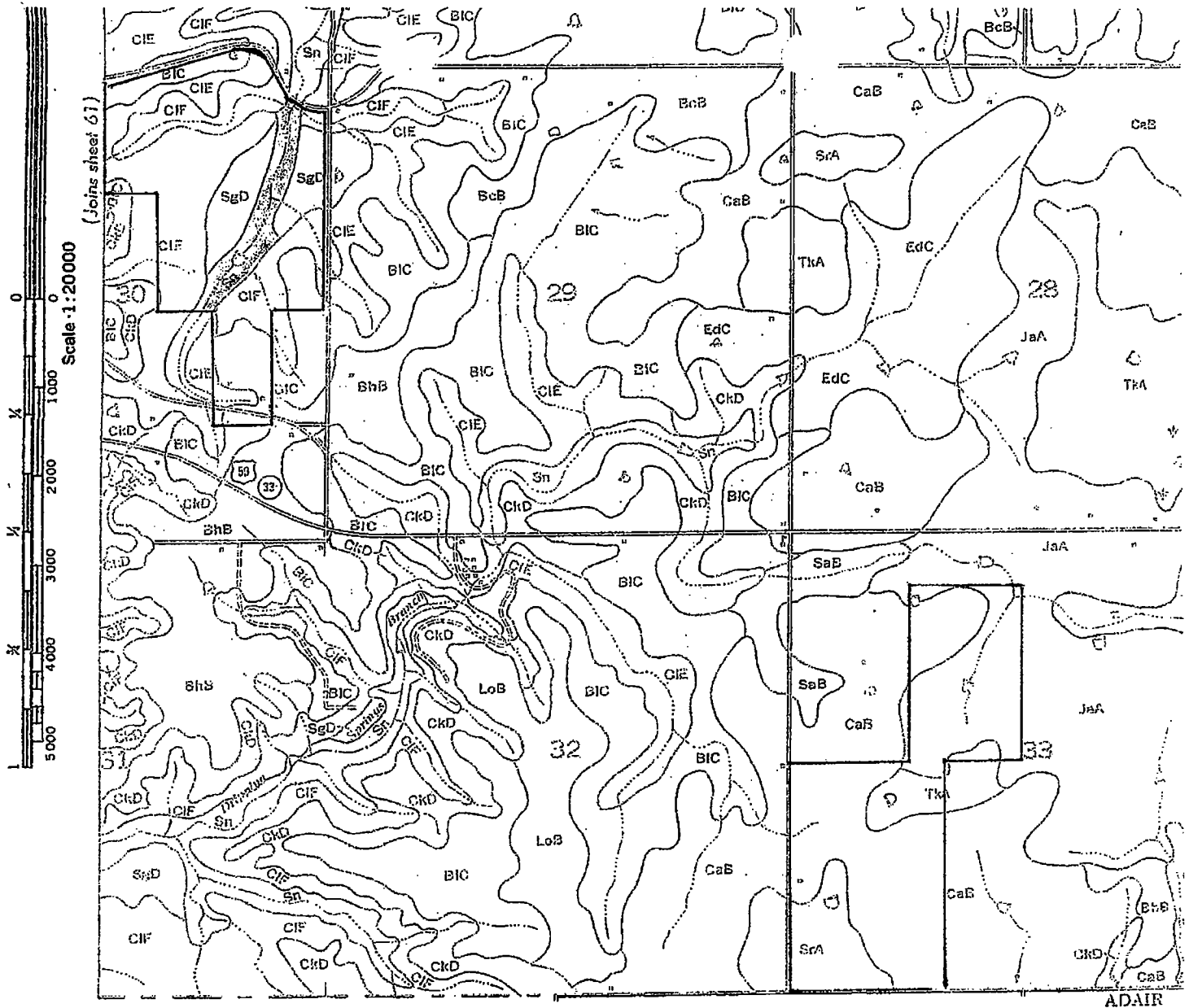
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Produced by the Oklahoma Department of Agriculture Geographic Information System.

Page 7

S.T. = Soil Test

Amici Add. 125



Section 30 & 33 T.20N R.25E DELAWARE COUNTY, OKLAHOMA

Map Symbol

Soil Name

BiC	Baxter-Locust complex, 3 to 5 percent slopes
CaB	Captina silt loam, 1 to 3 percent slopes
CiE	Clarksville stony silt loam, 5 to 20 percent slopes
CiF	Clarksville stony silt loam, 20 to 50 percent slopes
JaA	Jay silt loam, 0 to 2 percent slopes
SaB	Sallisaw silt loam, 1 to 3 percent slopes
SgD	Sallisaw gravelly silt loam, 3 to 8 percent slopes
Sn	Staser gravelly loam, 0 to 3 percent slopes
SrA	Stigler silt loam, 0 to 1 percent slopes
TkA	Taloka silt loam, 0 to 1 percent slopes

Map Symbol	SOIL NAME AND DESCRIPTION
BiC	Baxter-Locust complex, 3 to 5 percent slopes These soils occur in such a pattern they could not be shown separately on the soil map. They are both deep soils and have cherty silt loam surface layers. Baxter is dominantly a cherty clay in the subsoil and Locust is a cherty silty clay loam in the subsoil. Natural fertility, organic matter content, and available water capacity are medium.
CaB	Captina silt loam, 1 to 3 percent slopes This is a deep soil with a silt loam surface layer and a silty clay loam subsoil. Natural fertility and organic matter content are medium. The available water capacity is high.
CiE	Clarksville stony silt loam, 5 to 20 percent slopes This is a deep soil with a stony silt loam surface layer and a stony silty clay loam subsoil. Natural fertility, organic matter content, and available water capacity are medium to low.
CiF	Clarksville stony silt loam, 20 to 50 percent slopes This is a deep soil that contains many chert fragments in the soil and is stony on the surface. It has a very cherty silt loam surface layer and a very cherty silty clay loam subsoil. Natural fertility, organic matter content and available water capacity are medium to low.
JaA	Jay silt loam, 0 to 2 percent slopes This is a deep soil with a silt loam surface layer and a silty clay loam subsoil. Natural fertility and organic matter content are medium. The available water capacity is high.
SaB	Sallisaw silt loam, 1 to 3 percent slopes This is a deep soil with a silt loam surface layer and a silty clay loam subsoil. Natural fertility and organic matter content are medium. The available water capacity is high.

SgD Sallisaw gravelly silt loam, 3 to 8 percent slopes

This is a deep soil with a gravelly silt loam surface layer and a gravelly silty clay loam subsoil. Organic matter content, natural fertility, and available water capacity are medium.

Sn Staser gravelly loam, 0 to 3 percent slopes

This is a deep soil that is a gravelly loam throughout. It is subject to occasional flooding. Natural fertility, organic matter content, and available water capacity are medium to high.

SrA Stigler silt loam, 0 to 1 percent slopes

This is a deep soil with a thick silt loam surface layer and a silty clay loam subsoil. Natural fertility and organic matter content are medium. The available water capacity is high.

TkA Taloka silt loam, 0 to 1 percent slopes

This is a deep soil with a thick silt loam surface layer and a silty clay subsoil. Natural fertility, organic matter content, and available water capacity are high. Seasonal wetness may limit litter application.

OKLAHOMA CO-OPERATIVE EXTENSION SERVICE



SOIL, WATER & FORAGE ANALYTICAL LABORATORY

Division of Agricultural Sciences and Natural Resources • Oklahoma State University
Plant and Soil Sciences • 048 Agricultural Hall • Stillwater, OK 74078
Email: soils_lab@mail.pss.okstate.edu
Website: <http://clay.agr.okstate.edu/extensio/swfal/intro.htm>

SOIL TEST REPORT

DELAWARE CTY EXT OFC

PO BOX 1020
JAY, OK 74346
(918) 253-4332

Name: *Bill Anderson*

Location: *Field 1*

Lab ID No.: 297723
Customer Code: 21
Sample No.: 2944
Received: 8/28/2002
Report Date: 8/30/2002

- Soil Reaction -

pH: 5.2
Buffer Index: 6.7

- NO₃-N (lbs/acre) -

Surface: 6
Subsoil:

- Test Index (Mehlich 3) -

P: 54
K: 232

- Secondary Nutrients -

Surface SO₄-S (lbs/A):
Subsoil SO₄-S (lbs/A):
Ca (lbs/A):
Mg (lbs/A):

- Micronutrients -

Fe (ppm):
Zn (ppm):
B (ppm):

- Additional Test-

OM (%):

INTERPRETATION AND REQUIREMENTS FOR *Bermudagrass* (YIELD GOAL = 3tons/acre)

- Test -	- Interpretation -	- Requirement -	- Recommendations and Comments -
pH	Lime needed	1.4 tons ECCE/acre	
Nitrogen	Deficient	144 lbs/acre N	
Phosphorus	98% Sufficient	9 lbs/acre P ₂ O ₅ annually	
Potassium	98% Sufficient	11 lbs/acre K ₂ O annually	

DELAWARE COUNTY OSU EXTENSION CTR
PO BOX 1020 - FAIR GROUNDS
JAY, OK 74346
(918) 253-4332

Jan Hollenbeck

JAN HOLLENBECK
Extension Educator-Agriculture

Signature

Cobb

S/14 - 7/30



SOIL, WATER & FORAGE ANALYTICAL LABORATORY

Division of Agricultural Sciences and Natural Resources • Oklahoma State University
 Plant and Soil Sciences • 048 Agricultural Hall • Stillwater, OK 74078
 Email: soils_lab@mail.pss.okstate.edu
 Website: <http://clay.agr.okstate.edu/extensio/swfal/intro.htm>

SOIL TEST REPORT

DELAWARE COUNTY
 OKLA CONSER COMM PROG
 PO BOX 1020
 JAY, OK 74346
 405-521-2384

Name: *Tony Anderson*
 Location: *old Home Place*
30-20-25

Lab I.D. No.: 261075
 Customer Code: 1100
 Sample No: 2603
 Received: 07/09/01
 Report Date: 07/19/01

TEST RESULTS

Soil Reaction		NO ₃ -N (lbs/acre)		Test Index	
pH:	5.1	Surface:	4	P:	27
Buffer Index:	6.8	Subsoil:		K:	294
Secondary nutrients				Micronutrients	
Surface SO ₄ -S (lbs/acre):		Ca (lbs/acre):		Fe (ppm):	
Subsoil SO ₄ -S (lbs/acre):		Mg (lbs/acre):		Zn (ppm):	
				B (ppm):	

INTERPRETATIONS AND REQUIREMENTS FOR Bermudagrass (YIELD GOAL = 3.00 tons/acre)

Test	Interpretation	Requirement	Recommendations and Comments
pH	Lime needed	1.2 tons ECCE/acre to pH 6.8	
Nitrogen	Deficient	146 lbs/acre N	
Phosphorus	85% Sufficient	33 lbs/acre P ₂ O ₅ annually	
Potassium	Adequate	None	

Jason Hollenbeck
 JASON HOLLENBECK
 Extension Educator-Agriculture

DELAWARE COUNTY OSU EXTENSION CTR
 PO BOX 1020 - FAIR GROUNDS
 JAY, OK 74346
 (918) 253-4332

**AGRICULTURAL DIAGNOSTIC LABORATORY
 UNIVERSITY OF ARKANSAS - FAYETTEVILLE
 DRY MANURE FOR FERTILIZER ANALYSIS (report for CES-429)**

Name:	BILL ANDERSON	Received:	8-28-02
Address:	RT. 5, BOX 266	Mailed:	9-04-02
City:	COLCORD	State, Zip:	OK 74338
County:	DELAWARE	Check #:	POULTRY FEDERATION

Lab #	M21435					
Sample #	DEL/OSU-921					
Animal type	hens					
-age/lbs	none given					
Bedding type	hulls/shavings					
Manure type	cleanout					
Sample date	8-23-02					
Age of manure	1 yr					
pH	8.0					
Ec(umhos/cm)	5850					
% H2O	19.3					

% on dry weight basis

Total N	2.66					
Total P	1.62					
Total K	2.47					
Total Ca	2.24					

% on "as-is" basis

Total N	2.15					
Total P	1.31					
Total K	1.99					
Total Ca	1.81					

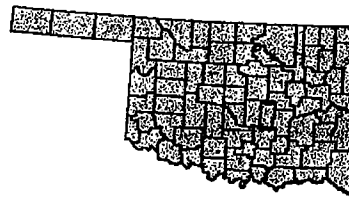
lbs/ton on "as-is" basis

N	42.9					
TOTAL P AS						
"P2O5"	59.9					
TOTAL K AS						
"K2O"	47.8					
Ca	36.2					

*lbs/ton P2O5 = %Total P on "as-is" basis multiplied by 20*2.29

*lbs/ton K2O = %Total K on "as-is" basis multiplied by 20*1.2

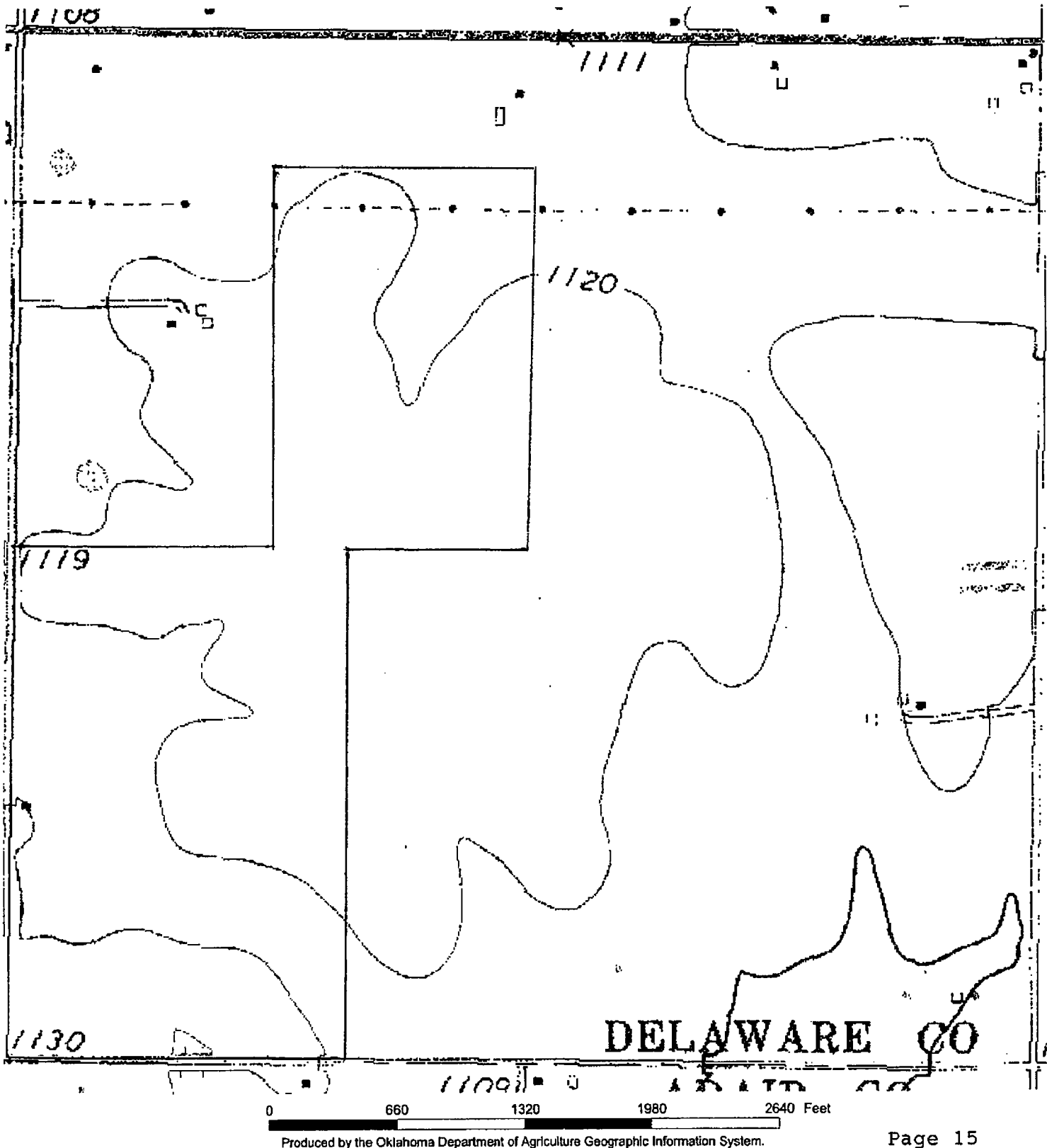
S33 T20N R25E Delaware & Adair Counties, OK



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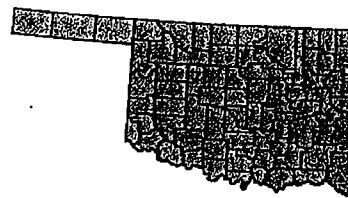
Produced by the Oklahoma Department of Agriculture Geographic Information System.

S33 T20N R25E Delaware & Adair Counties, OK



Produced by the Oklahoma Department of Agriculture Geographic Information System.

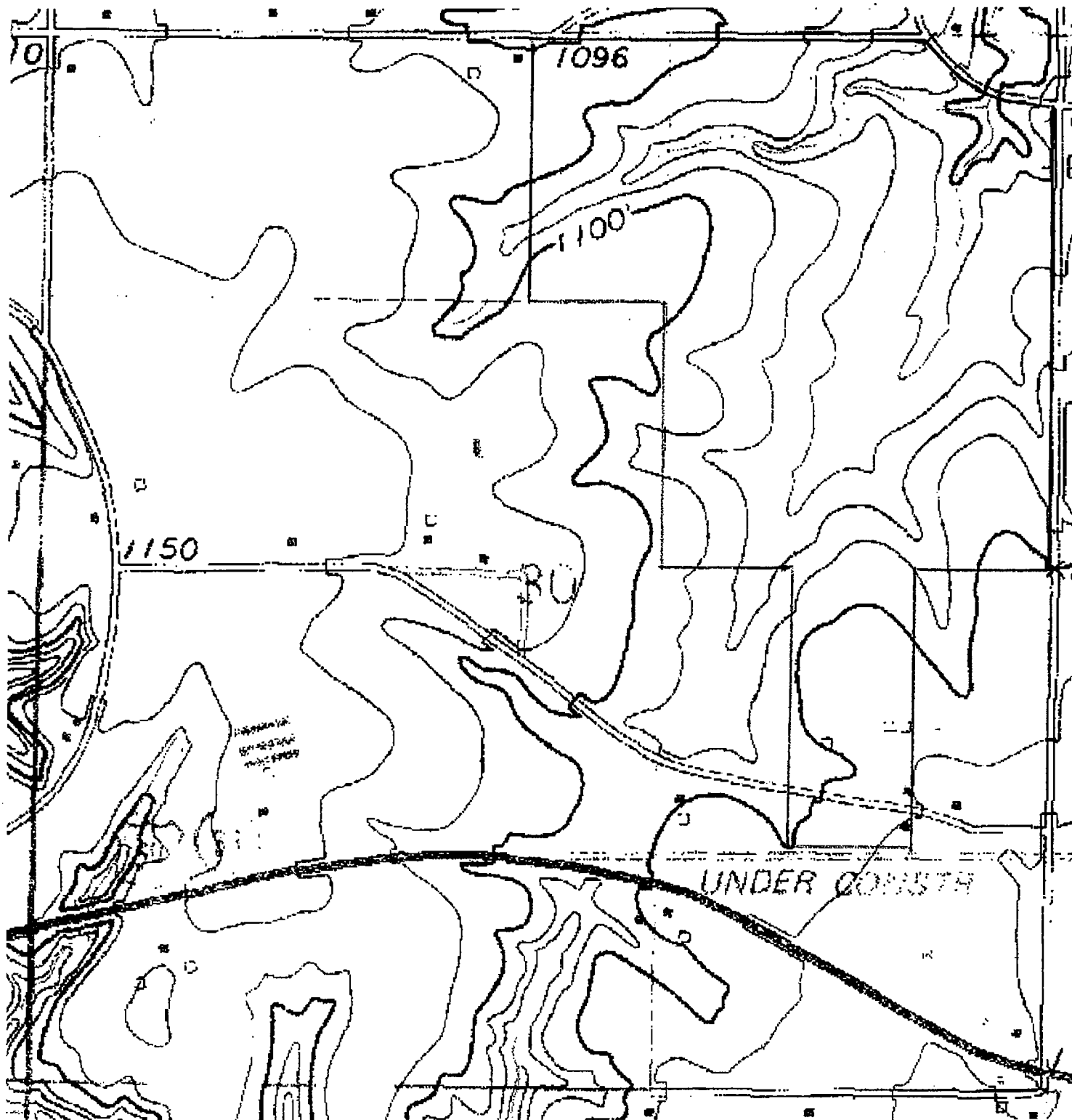
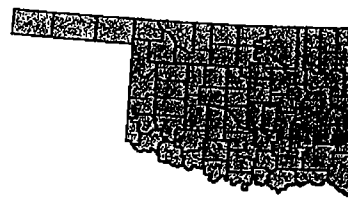
S30 T20N R25E Delaware County, OK



0 660 1320 1980 2640 Feet

Produced by the Oklahoma Department of Agriculture Geographic Information System.

S30 T20N R25E Delaware County, OK



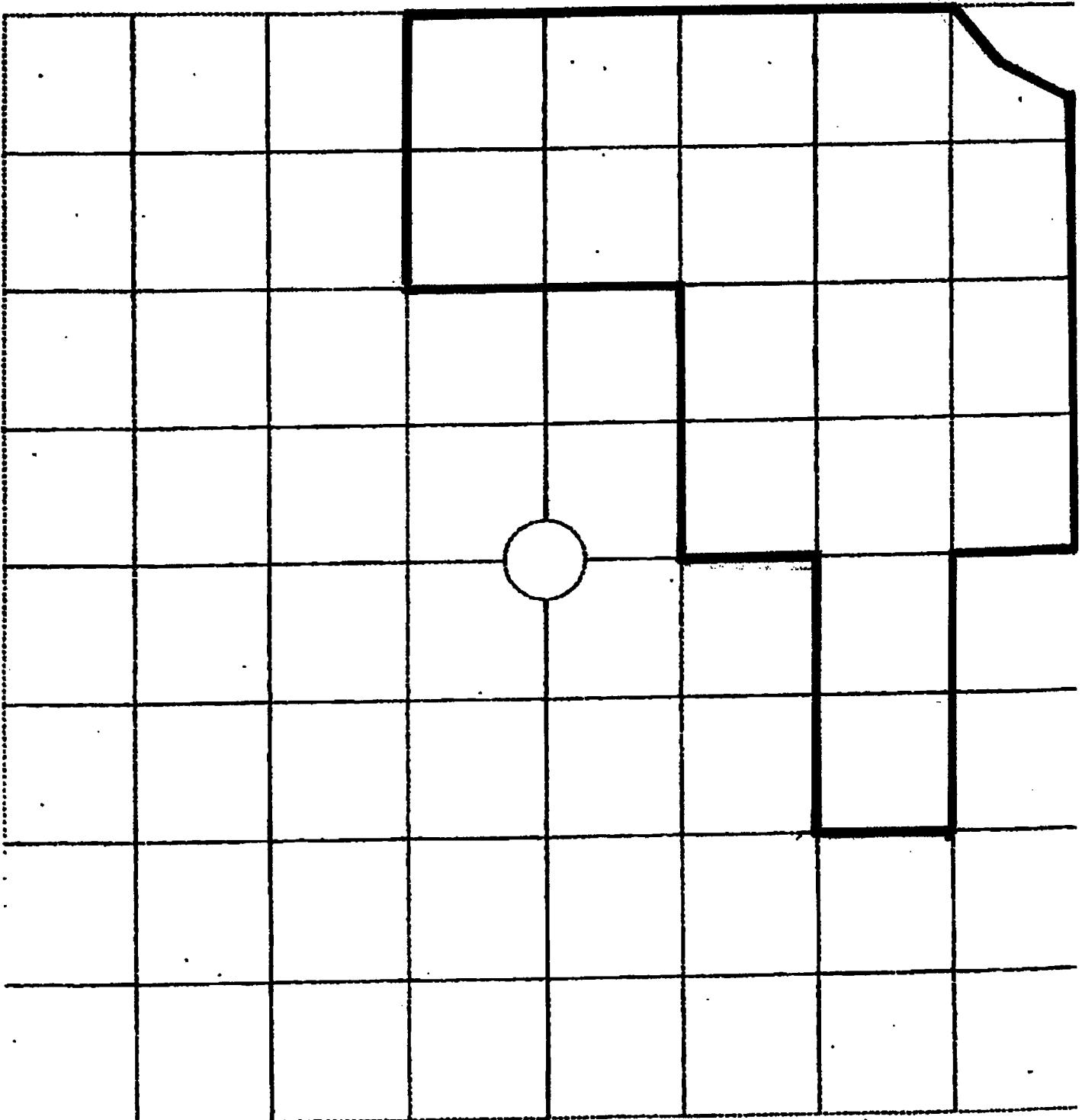
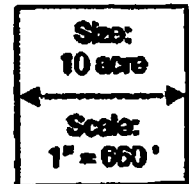
0 660 1320 1980 2640 Feet

Produced by the Oklahoma Department of Agriculture Geographic Information System.

OKLAHOMA DEPARTMENT OF AGRICULTURE
WATER QUALITY SERVICES DIVISION
Legal Location Plat



Facility Name Bill R. Anderson
Legal Desc. Sec 30 T 20N R 25E Mer.
County Delaware

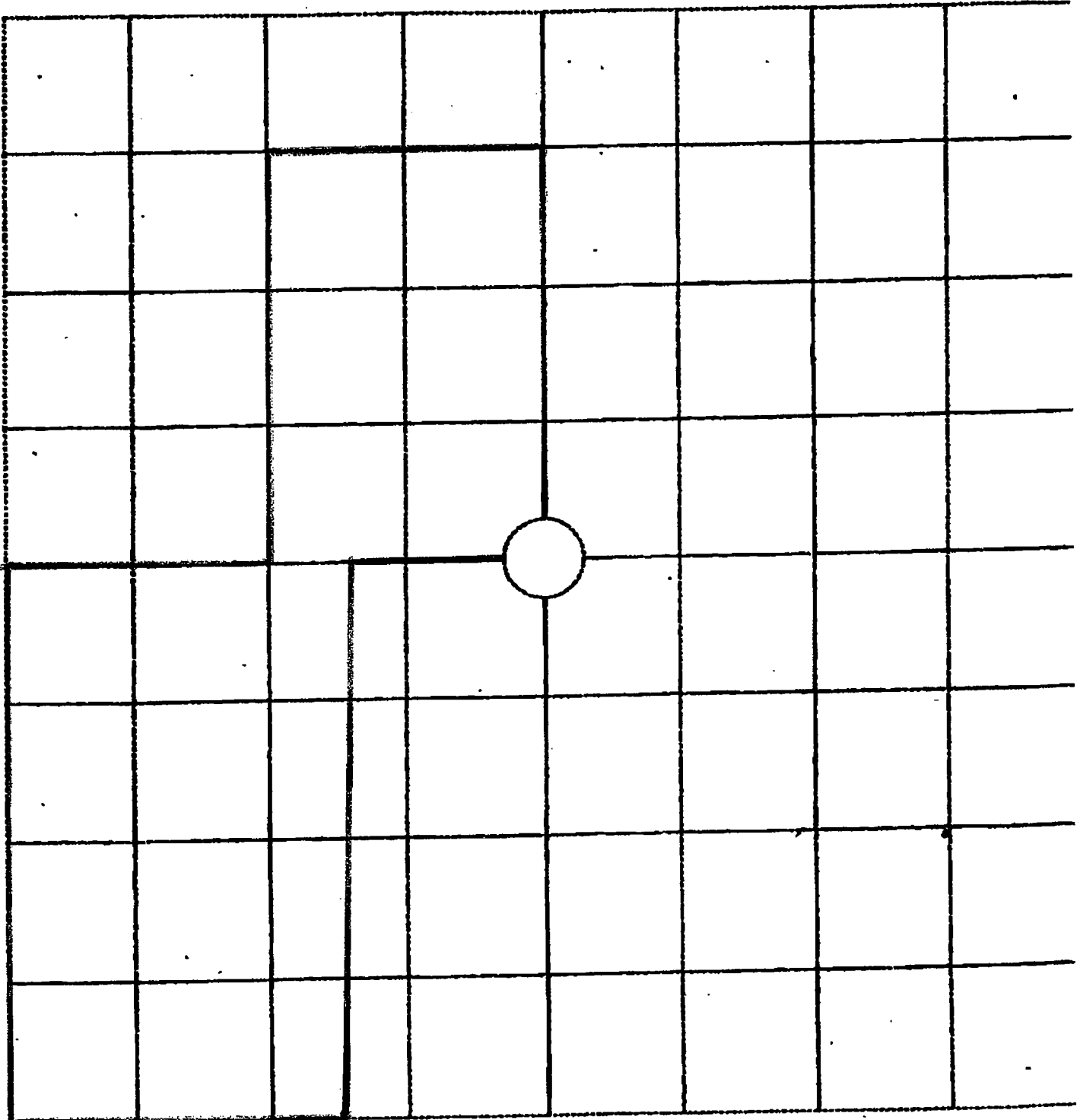


OKLAHOMA DEPARTMENT OF AGRICULTURE
WATER QUALITY SERVICES DIVISION
Legal Location Plat

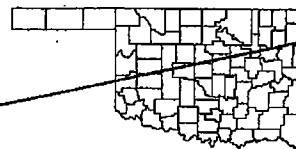


Facility Name Bill R. Anderson
Legal Desc. Sec 33 T 20N R 25E Mer.
County Delaware

Size:
10 acre
Scale:
1" = 660'



S9 T20N R25E
Delaware County, OK



0 660 1320 1980 2640 Feet

Produced by the Oklahoma Department of Agriculture Geographic Information System.

Amici Add. 138

35:17-5-5. Animal Waste Management Plan requirements

(a) The Animal Waste Management Plan shall contain, at a minimum, the following:

- (1) A description of poultry waste handling procedures and availability of equipment and type of equipment to be used.
- (2) The calculations and assumptions used for determining land application rates.
- (3) All nutrient analysis data, including soil and poultry waste testing.
- (4) Legal description of lands to be used by an operation for land application.
- (5) Soils map with description and type or series.
- (6) Land application rates of poultry waste shall be based on the available nitrogen and phosphorus content of the poultry waste and soil test results.
- (7) The procedures documented in the AWMP shall ensure that the handling and utilization of poultry waste complies with the following requirements:
 - (A) Adequate poultry waste storage shall be provided. Poultry waste shall not be stored without adequate protection from rainfall and runoff. All new poultry feeding operations shall make provisions for storage of poultry waste prior to operating. Exceptions to storage requirements for poultry waste in emergency situations shall be granted on a case by case basis. Exceptions shall include but not be limited to allowing a contract poultry grower to take such actions as are necessary to meet requirements imposed on a grower by an integrator. However, in all situations growers shall be required to take all actions feasible to prevent pollution from stored poultry waste.
 - (B) Poultry waste shall not be applied to land when the ground is saturated or during rainfall events. Poultry waste shall not be applied to land when the ground is frozen or snow covered except in conformance with the AWMP.
 - (C) Poultry waste shall only be applied to suitable land at appropriate times and rates as specified by the AWMP. Runoff of poultry waste from the application site is prohibited.
 - (D) All practices necessary to minimize movement of poultry waste to watercourses shall be utilized and documented in the AWMP.
 - (E) Edge of field, grassed strips shall separate water courses from runoff which may be carrying eroded soil and poultry waste.
 - (F) Poultry waste application shall be prohibited on land subject to excessive erosion.
 - (G) Land application rates of poultry waste shall provide controls for runoff as appropriate for site conditions.

(b) The AWMP shall also include a method for the disposal of carcasses. The AWMP shall include provisions for disposal of carcasses associated with normal mortality and shall include provisions for emergency disposal when a major disease outbreak or other emergency results in deaths significantly higher than normal mortality rates. Accepted methods of carcass disposal include:

- (1) Rendering
 - (A) Disposal of all carcasses shall occur within a reasonable period of time as approved by the State Department of Agriculture.
 - (B) Storage facilities shall be sealed or have lids and maintained so as to prevent pests and odors.
- (2) Burial shall only be allowed as a method of carcass disposal if no reasonable alternative exists and specific measures and practices are identified which will be utilized to protect the ground and surface waters of the State.
- (3) Composting by methods as approved in the AWMP.
- (4) Incineration shall only be used as a method of carcass disposal if the poultry feeding operation has a valid air quality permit from the Oklahoma Department of Environmental Quality, Air Quality Division, if required.

(c) Storage 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.

(d) The operator shall notify the State Department of Agriculture within twenty-four (24) hours of a discharge.

[Source: Added at 15 Ok Reg 1057, eff 12-19-97 (emergency); Added at 15 Ok Reg 2508, eff 6-25-98; Amended at 15 Ok Reg 4266, eff 8-20-98 (emergency); Amended at 16 Ok Reg 2119, eff 6-25-99]

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ET AL.,

Plaintiffs,

v.

TYSON FOODS, INC. ET AL.,

Defendants.

Case No. 4:05-CV-00329-GKF-SH

JOINT MOTION FOR ENTRY OF CONSENT JUDGMENT

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, “Plaintiffs”) and Defendants George’s, Inc. and George’s Farms, Inc. (collectively “George’s” and together with the Plaintiffs, the “Parties to Settlement”) move this Court to approve and enter judgment consistent with the attached Consent Judgment. *See* Exhibit 1.

Pursuant to Federal Rule of Civil Procedure 60(b), the Parties to Settlement hereby seek relief from the Court’s December 19, 2025 Final Judgment as the Parties agree, pursuant to the Consent Judgment, that “the judgment has been . . . released.” Fed. R. Civ. P. 60(b)(5).

In support, the Parties to Settlement show the Court the following:

1. On January 18, 2023, this Court issued Findings of Fact and Conclusions of Law, finding “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.” Doc. 2979 at 213. As part of its Findings of Fact and Conclusions of Law, the Court directed parties to “meet and attempt to reach an agreement with regard to remedies to be imposed in this action.” *Id.*

2. In December 2024, the Parties to Settlement and the other Defendants appeared before this Court in a six-day evidentiary hearing. After a review of the evidence presented, the Court entered its Opinion and Order, “fully incorporat[ing]” its January 18, 2023 Findings of Fact and Conclusions of Law, and finding, among other things, that “the conditions of the IRW have not materially changed since trial” Doc. 3161 at 2, 6–7.

3. On December 19, 2025, this Court entered Final Judgment in favor of the State 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. *See* Doc. 3192 at 5. Additionally, the Court issued a permanent injunction against all Defendants in this case. *Id.* at 6–7.

4. Ten days later, on December 29, 2025, George’s filed its Notice of Appeal of the Court’s Final Judgment to the Tenth Circuit. Doc. 3202.

5. That same day, George’s, jointly with the other Defendants, moved to stay the Judgment pending appeal. Doc. 3203.

6. In light of the Court’s issued opinions, its directives to find remedial solutions, and the newly-lodged appeals to the Tenth Circuit and the associated motion to stay, the Parties to Settlement have agreed to a fair, equitable, and reasonable remedial plan that will promote certainty and stability for the State, George’s and George’s contract growers moving forward. *See generally* Exhibit 1. The Parties to Settlement agree that, if approved, the attached Consent Judgment supersedes and replaces the Judgment (Doc. No. 3192) entered by the Court on December 19, 2025 as to George’s.

7. The Parties to Settlement have negotiated the Consent Judgment in good faith and agree that the Consent Judgment is a fair and reasonable compromise of long-contested issues, and that it is consistent with the public interest.

CONCLUSION

Pursuant to Federal Rule of Civil Procedure 60(b)(5), for the reasons stated herein, the Parties to Settlement respectfully request this Court enter the attached Consent Judgment.

Respectfully submitted,


GENTNER DRUMMOND, OBA #16645

Attorney General

GARRY M. GASKINS, II, OBA #20212

Solicitor General

JENNIFER L. LEWIS, OBA #32819

Deputy Attorney General

OFFICE OF ATTORNEY GENERAL

STATE OF OKLAHOMA

313 N.E. 21st Street

Oklahoma City, OK 73105

Phone: (405) 521-3921

Garry.Gaskins@oag.ok.gov

Jennifer.Lewis@oag.ok.gov

M. David Riggs, OBA #7582

Kristopher E. Koepsel, OBA #19147

Riggs, Abney, Neal, Turpen, Orbison & Lewis

502 West 6th Street

Tulsa, OK 74119

(918) 587-3161

Robert A. Nance, OBA #6581

W.A. Drew Edmondson, OBA #2628

Riggs, Abney, Neal, Turpen, Orbison & Lewis

Oklahoma City, OK 73103

(405) 843-9909

Louis W. Bullock, OBA #1305

Bullock Law Firm PLLC

110 W. 7th Street

Tulsa, OK 74119

(918) 584-2001

Frederick C. Baker, admitted *pro hac vice*

Cynthia Solomon, admitted *pro hac vice*

Kristin Hermiz, admitted *pro hac vice*

Madeline Becker, admitted *pro hac vice*

Motley Rice, LLC

28 Bridgeside Boulevard

Mount Pleasant, SC 29464

(843) 216-9186

Counsel for Plaintiffs

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



Robert George, OBA #18562
Georges, Inc.
402 W. Robinson Ave.
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

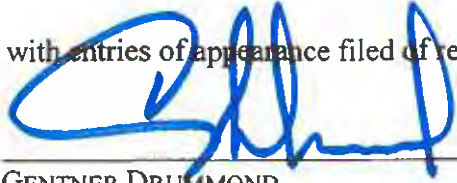
And

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.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of January, 2026, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants with entries of appearance filed of record.



GENTNER DRUMMOND
Attorney General

Exhibit 1

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.

CONSENT JUDGMENT

A. 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, “Plaintiffs”) filed a civil Complaint on June 13, 2005 alleging that George’s, Inc. and George’s Farms, Inc. (collectively “George’s”) and various other defendants degraded and impaired the lands, waters, and other natural resources of the Illinois River Watershed (“IRW”). For the avoidance of doubt, the IRW is the watershed with its terminus at Lake Tenkiller Ferry Lake (“Lake Tenkiller”) and with its headwaters in Northwest Arkansas. The 8-Digit Hydrologic Unit Code for this watershed is 11110103. In this Consent Judgment, IRW 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 IRW includes the 12,900 acre Tenkiller Ferry Lake. State’s Ex. 3351 at OSU0005174.

B. After decades of litigation, Plaintiffs and George's (the "Parties"; singularly a "Party") have agreed to the entry of this consent judgment ("Consent Judgment") in full settlement of all claims that were brought or could have been brought against George's in the above-styled proceedings. As to George's, this Consent Judgment supersedes and replaces the Judgment (Doc. No. 3192) entered by the Court on December 19, 2025 (the "December 19, 2025 Judgment"). George's does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the Complaint. This Consent Judgment shall not be used against George's 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.

C. The Parties agree, and the Court by entering this Consent Judgment finds, that this Consent Judgment, and the remedial and monetary obligations thereunder, address only the acts or omissions of George's, as alleged in the Complaint, and do not address the alleged acts and omissions of any other person or entity, aside from those expressly released herein.

D. The Parties agree, and the Court by entering this Consent Judgment finds, that this Consent Judgment has been negotiated by the Parties in good faith and the terms memorialized in this Consent Judgment will avoid further prolonged and complex litigation and appeal between the Parties.

E. This Consent Judgment constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Judgment, and the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Judgment.

F. The Parties waive any right they may have to appeal as to each other from the December 19, 2025 Judgment and all earlier decisions by this Court, as well as from this Consent Judgment and from any order adopting it, provided that no substantive changes are made to the Consent Judgment after it has been presented by the Parties to the Court for approval. For the avoidance of doubt, in the event that this Consent Judgment is withdrawn by the Parties prior to entry, is substantively modified by the Court without the Parties' consent or is vacated after entry by the Court, both Parties retain the right to appeal as to each other from the December 19, 2025 Judgment and all earlier decisions by this Court. Within five (5) days of the Effective Date, George's will withdraw as a movant from the request(s) for a stay of the December 19, 2025 Judgment. Plaintiffs retain the right to appeal vis-à-vis other defendants, until and unless that right is extinguished by other Consent Judgments.

NOW, THEREFORE, without admission by George's of the allegations in the Complaint, and upon the consent and agreement of the Parties to this Consent Judgment, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action. This Court also has personal jurisdiction over the Parties. Solely for the purposes of this Consent Judgment and any enforcement of its provisions, George's waives all objections and defenses that it may have to jurisdiction of the Court.

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

II. EFFECTIVE DATE

3. The effective date of the Consent Judgment (the “Effective Date”) shall be the day the Court enters the Parties’ proposed Consent Judgment until and unless a Party successfully challenges it. The Parties agree to work together in good faith to achieve the entry of this proposed Consent Judgment and to oppose any efforts by others who are not Parties to this Consent Judgment to appeal, materially modify, or otherwise challenge it. The Parties also agree to make best efforts to encourage third parties to support the terms and intent of this Consent Judgment. The Parties agree to work together cooperatively to support the aims of the Consent Judgment by encouraging engagement with stakeholders and participation in educational programs to increase the likelihood of implementation practices that reduce the impact of excess phosphorus in the IRW.

III. MONETARY RELIEF AND WITHDRAWAL OF NOTICE OF APPEAL

4. Thirty (30) days after the Effective Date, provided that no appeal or objection regarding this Consent Judgment is pending on such date, George’s will: (a) voluntarily dismiss George’s notice of appeal as to the December 19, 2025 Judgment; and (b) make a one-time payment in the amount of \$5,000,000 to the State (the “Monetary Relief Fund”) 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. In the event an appeal or objection regarding this Consent Judgment is pending on the date that is thirty (30) days after the Effective Date, George’s obligations under this Paragraph 4 will be suspended until thirty (30) days after the date when such appeal or objection is resolved, unless George’s obligations under this Paragraph are no longer enforceable as a result of the appeal or objection.

5. No part of the Monetary 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.

IV. LITTER REMOVAL

6. **Litter Removal Commitments.** George's, through its own efforts and/or coordinated efforts with independent contract growers raising its birds, shall meet or exceed the following requirements or, upon written election by George's, the least restrictive requirements contained within any binding and enforceable consent judgment or settlement agreement between the State and any other company named as a defendant in this case that continues to raise poultry in the IRW after the Effective Date:

Time Period	Land Application Restrictions
Years 1 & 2	No more than 40% of litter removed each year from poultry houses in the IRW owned or operated by or under contract with George's (each an "IRW Grower" and collectively the "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.¹
Years 3 & 4	No more than 30% of litter removed each year from poultry houses of the 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 the 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.

¹ Neither this provision, nor any other provision in this Consent Judgment, allows for, or should be construed as allowing for, non-compliance with any and all applicable laws, regulations, rules, court orders, and judgments.

“Year 1” for purposes of the foregoing land application restrictions shall be the twelve (12) month period commencing on the Effective Date, and each subsequent year shall commence on the anniversary of the Effective Date and end twelve (12) months thereafter. 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 George’s compliance with the litter removal requirements of this Paragraph 6. 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 restrictions unless and until such stored litter is subsequently hauled away from the farm or land applied to soils in a manner compliant with all applicable laws, regulations, rules, court orders, and judgments, including this Consent Judgment. For the calculations for showing George’s compliance with the litter removal requirements of this Paragraph 6, 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. The land application restrictions described for “Years 5, 6 & 7” in the table above may be extended by mutual written agreement of the Parties, or under the conditions set forth in Paragraph 24 for additional time periods after the conclusion of “Year 7.”

“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

Waters², whereby the waterbody is impaired for nutrient-related causes including nitrogen, phosphorus, low dissolved oxygen in lakes, or high chlorophyll-a concentrations.

7. **Covenant Not to Sue.** Provided that George's complies with the land application restrictions described in Paragraph 6 above, the State will not bring any claim, alleging or asserting that George's 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 23 and additional time periods, if any, for which the Parties mutually agreed to extend the land application restrictions in accordance with Paragraph 6 above. If the Parties mutually agree to extend the land application restrictions in accordance with Paragraph 6 above, to claim the benefit of the covenant not to sue under this Paragraph 7, or pursuant to Paragraph 24, for any time period after the conclusion of "Year 7," George's will provide, upon request, written records from the IRW Growers and the litter haulers demonstrating that, for the time period at issue, it has continued to meet the land application restrictions described for Year 7 in the table included in Paragraph 6.

V. SPECIAL MASTER³

² 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.

³ If Plaintiffs enter into subsequent Consent Judgments that provide for a different term to describe the role of the special master, the Parties intend that the same person or entity oversee all defendants. Further, if the Court appoints a special master under the December 19, 2025 Judgment with respect to any other defendant, the Parties intend that the same person or entity oversee all defendants, with the special master's oversight of George's governed by the requirements of this Consent Judgment.

8. Within thirty (30) days after the Effective Date, the State will apply to the Court for the appointment of a special master to monitor compliance by George's with the applicable land application restrictions of Paragraph 6. George's will not oppose such appointment, however, George's will be afforded the opportunity to object, consistent with Paragraph 9 below, to the person or entity selected by the State. The special master will be entitled to judicial immunity in the performance of his or her duties within the scope of the special master's court-approved engagement under this Consent Judgment.

9. The special master shall meet the following minimum requirements: (a) knowledgeable by experience or training in agricultural practices; (b) knowledgeable by experience or training in water quality concerns related to agriculture; and (c) no prior involvement as a lawyer, witness or consultant for any party to this proceeding. The State shall confer with George's on the selection of the person or entity to serve as the special master. If the Parties are unable to agree on the person or entity to serve as the special master, then the State will petition the Court for approval of the person or entity selected by the State with George's being afforded an opportunity to submit an objection to the Court within ten (10) days of the State's petition. The Court shall be free to appoint the person or entity selected by the State for special master or any other person or entity meeting the minimum requirements for the special master, if the Court deems appropriate or necessary. Any vacancy of the special master's position occurring for any reason during the Term shall be filled in the manner described in this Paragraph 9.

10. Within sixty (60) days of the conclusion of each year included in the table in Paragraph 6, George's shall certify under oath compliance with the applicable land application restrictions of Paragraph 6 and provide the special master with business records and supporting documentation sufficient to substantiate such compliance.

11. George's shall cooperate with all reasonable requests by the special master to obtain and/or inspect records of George's, the IRW Growers and the haulers removing litter from the farms of IRW Growers to the extent necessary to monitor compliance with the litter application restrictions of Paragraph 6. If the special master believes that additional information is needed to assess George's compliance with the terms of this Consent Judgment, he or she shall first request that information from George's. If George's does not provide the requested information to the special master's satisfaction, he or she may petition the Court, which petition shall set forth the requested information, an explanation as to why the information is needed to assess George's compliance with the terms of this Consent Judgment and efforts to obtain that information from George's. Both George's and Plaintiffs may be heard regarding the request. In the event that the special master wishes to conduct an onsite inspection, the special master must show the Court by a preponderance of the evidence why such an inspection is necessary to effectuate the terms of this Consent Judgment.

12. Within thirty (30) days of the Effective Date, George's will arrange for direct payment of \$250,000 to the State 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 of Paragraph 6. The State will approve distributions from the escrow account to the special master and George's financial obligations for cost of the special master shall be fully and finally satisfied through the \$250,000 payment described in this Paragraph 12 regardless of the actual cost of the compliance monitoring by the special master. Once the escrow account established under this Consent Judgment is exhausted, the State shall be responsible thereafter for funding any future cost of compliance monitoring by the special master, including by using funds obtained from other sources, including other defendants. Any surplus or balance remaining in the

escrow account as of the termination of this Consent Judgment shall be used by the State for remediation or conservation of the IRW.

13. If the special master believes that George's has Materially failed to meet the land application restrictions of Paragraph 6 during the Term of this Consent Judgment, the special master shall provide written notice of the violation to George's and the Oklahoma Attorney General. "Material" in this context shall mean that George's failed to meet an applicable land application restriction of Paragraph 6 by more than five percent (5%).⁴ During the sixty-day period after providing notice, the special master shall make himself or herself reasonably available to meet with George's and the Oklahoma Attorney General to discuss the substance of the alleged violation, including but not limited to the reason(s) for the special master's belief that George's is in violation, and the special master shall consider in good faith any additional evidence or arguments that George's chooses to submit to demonstrate its compliance with this Consent Judgment and any additional evidence or arguments that the State chooses to submit to demonstrate non-compliance with this Consent Judgment.

14. If, after considering any additional evidence or arguments presented by George's and the State, the special master concludes that a Material violation of the land application restrictions of Paragraph 6 occurred, then George's will make a one-time payment to the State equal to the sum of (1) \$10,000 plus (2) \$30/ton for each ton of litter that produced the violation.⁵

⁴ By way of illustration only, during Year 1, if 100,000 tons of litter was removed from the houses of the IRW Growers, 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 George's would have Materially failed to meet the land applications restrictions of Paragraph 6.

⁵ By way of an illustration only, if 5,000 tons of litter more than was permitted under Paragraph 6 was land applied in the IRW, then the stipulated penalty for that violation would be \$160,000 computed as follows: \$10,000 + (5,000 tons x \$30).

Any payment to the State for a Material violation of the land application restrictions of Paragraph 6 will be used for remediation or conservation projects in the IRW or will be used to pay for the services of the special master at the State's sole discretion.

15. If George's disputes the existence of a Material violation or the calculation of a penalty amount, George's may, within thirty (30) days of the issuance of a penalty demand, petition the Court to resolve any such dispute. George's shall pay any undisputed amount before petitioning the Court but may withhold payment of any disputed amount until thirty (30) days after the determination is made without incurring any interest or further penalty provided the Court determines that the dispute was instituted in good faith. The Court may award reasonable attorney's fees and costs to the prevailing party in a proceeding initiated under this Paragraph 15.

16. The special master shall annually prepare a report describing the status of George's compliance with the provisions of this Consent Judgment including progress toward and/or satisfaction of the land application restrictions set forth in Paragraph 6, any Material violation of the land application restrictions set forth in Paragraph 6, and any penalty demands. Such reports shall be delivered to the Oklahoma Attorney General and to the Court. The annual reports required under this Paragraph 16 shall be treated by the State and the Court as public records provided that no information specifically identifying the name or location of poultry farms or landowners is contained within such reports.

VI. STATE NUTRIENT MANAGEMENT LAWS NOT SUPERSEDED

17. Litter applications occurring within the IRW during the Term of the Consent Judgment, if any, and applications occurring after the expiration of the Term of the Consent Judgment will remain 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. The special master shall have no authority to investigate, enforce or monitor compliance with legal requirements applicable to poultry litter or agricultural operations other than the land application restrictions agreed to by the Parties as set forth in Paragraph 6 of this Consent Judgment.

VII. EFFECT OF SETTLEMENT AND RELEASE

18. This settlement is conditioned upon the approval of the Consent Judgment by the Court. 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 (“Releasing Parties”) shall fully, finally, and forever release, relinquish and discharge George’s 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 George’s (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 Consent Judgment under the provisions of the December 19, 2025 Judgment are Released Claims for purposes of this Consent Judgment. 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 Consent Judgment 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 Consent Judgment. 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.

19. The Parties agree the IRW Growers were never sued by the State in this lawsuit. However, for the avoidance of doubt, as of the Effective Date, the Releasing Parties shall fully, finally, and forever release, relinquish and discharge 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 (the "Released IRW Growers") from any Released Claim. The Releasing Parties further agree that they will not file, or encourage others to file or pursue, any claim against the Released IRW Growers arising out of, or relating to, the Released Claims. However, in the event a non-party to this Consent Judgment files or pursues any claim against the Released IRW Growers 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 the terms of this Consent Judgment. 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. The Released Parties agree not to use this Consent Judgment as the reason or basis for any decision not to renew contracts with Released IRW Growers. Notwithstanding the preceding sentence, nothing in this Consent Judgment obligates the Released Parties to renew or extend any contract with any particular Released IRW Growers.

20. As of the Effective Date, all claims asserted in this action by George's against third party defendants shall be dismissed from the case with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A).

21. 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. Therefore, in consideration of the payments and commitments by George's specified in this Consent Judgment, the State agrees to a reduction of any damages awarded against other defendants to this lawsuit on a joint and several basis to the extent of the pro-rata share of the liability of 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 further agrees and intends that this Consent Judgment 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.

VIII. ATTORNEYS' FEES AND COSTS

22. Provided that this Consent Judgment is entered without material modification of the terms negotiated by the Parties and is not thereafter successfully challenged or vacated, George's waives and releases any right available to it at law to seek to recover its attorney's fees,

costs and expenses incurred in connection with this lawsuit from the State. The State reserves the right to apply to the Court, at an appropriate time, for an award of its attorney's fees and litigation costs incurred in connection with this lawsuit. The State further 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 between the State and George's. The Parties agree, however, that George's liability under any award or determination for costs or attorneys' fees by the Court, including by not limited to any award arising from the December 19, 2025, Judgment, has been fully satisfied and released under the terms of this Consent Judgment, provided that this Consent Judgment is not successfully challenged. For the avoidance of doubt, the Parties further agree that George'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 the State, has been fully satisfied and released under the terms of this Consent Judgment.

XI. TERM AND TERMINATION

23. Unless extended by the Court in accordance with Paragraph 24, the obligations of George's under the Consent Judgment and the Court's continuing jurisdiction over this settlement will automatically terminate seven (7) years from the Effective Date ("Term").

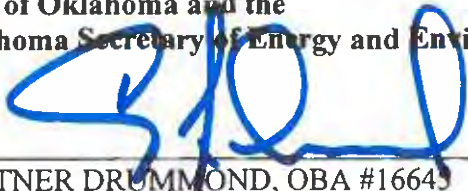
24. Prior to expiration of the Term, the State may petition the Court to retain jurisdiction beyond the Term only upon a showing by clear and convincing evidence that George's has materially violated the provisions of this Consent Judgment and has failed or refused to adequately cure or remedy such violations within a reasonable time following George's receipt of written notice of such violations. The State shall bear the burden of proof as to any petition asking for a continuation of the Court's jurisdiction beyond the Term. If the State prevails on such petition, the

Court shall retain jurisdiction to the extent necessary for George's to cure or remedy the violations proven by the State and the provisions of this Consent Judgment will remain in force until George's shows by clear and convincing evidence that George's has cured or remedied such violations.

XII. SIGNATORIES

29. Each Undersigned signatory certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Judgment and to execute and legally bind such Party to this document.

**State of Oklahoma and the
Oklahoma Secretary of Energy and Environment**



GENTNER DRUMMOND, OBA #16643

Attorney General

GARRY M. GASKINS, II, OBA #20212

Solicitor General

JENNIFER L. LEWIS, OBA #32819

Deputy Attorney General

OFFICE OF ATTORNEY GENERAL STATE OF OKLAHOMA

313 N.E. 21st Street

Oklahoma City, OK 73105

Direct: (405) 521-3921

jennifer.lewis@oag.ok.gov

M. David Riggs, OBA #7583

Kristopher E. Koepsel, OBA #19147

Riggs, Abney, Neal, Turpen, Orbison & Lewis

502 West 6th Street

Tulsa, OK 74119

(918) 587-3161

Robert A. Nance, OBA #6581

W.A. Drew Edmondson, OBA #2628

Riggs, Abney, Neal, Turpen, Orbison & Lewis

528 N.W. 12th Street

Oklahoma City, OK 73103

(405) 843-9909

Louis W. Bullock, OBA #1305
Bullock Law Firm PLLC
110 W. 7th Street
Tulsa, OK 74119
(918) 584-2001

Frederick C. Baker, admitted *pro hac vice*
Cynthia Solomon, admitted *pro hac vice*
Kristin Hermiz, admitted *pro hac vice*
Madeline Becker, admitted *pro hac vice*
Motley Rice LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29464
(843) 216-9186

Counsel for Plaintiffs

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



Robert George, OBA #1836
Georges, Inc.
402 W. Robinson Ave.
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

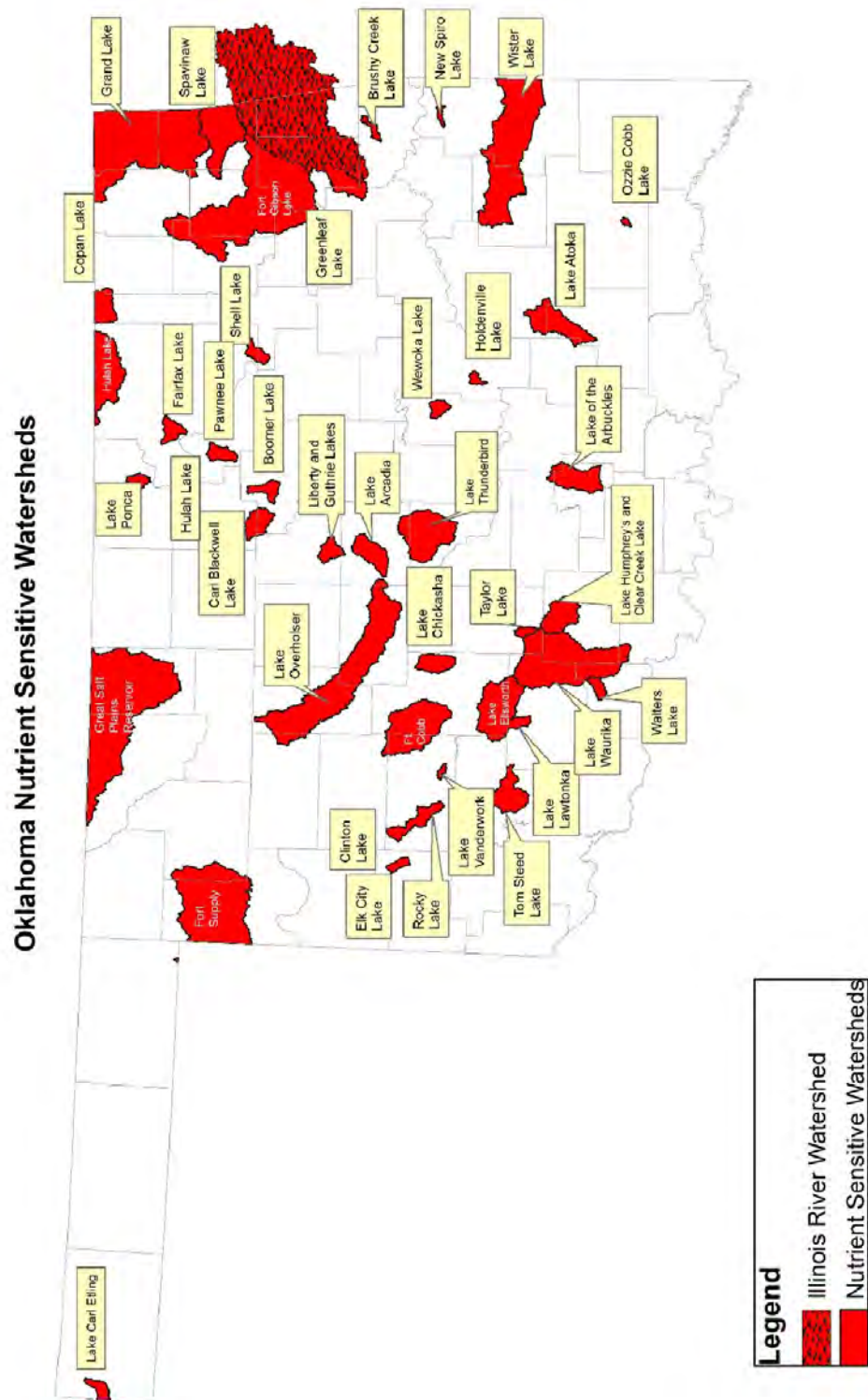
Clinton Derek Russell
Taylor Foster Law Firm
P.O. Box 309
Claremore, OK 74018
(918) 343-4100

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

IT IS SO ORDERED this _____ day of January 2026.

HON. GREGORY K. FRIZZELL
UNITED STATES DISTRICT JUDGE

ATTACHMENT A



**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.)

Case No. 05-CV-00329-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.)

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 State of Oklahoma brought this case against 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. alleging that defendants have polluted and continue to pollute the waters of

the Illinois River Watershed (IRW) with phosphorus from the waste generated from defendants' poultry and applied to lands in the IRW. The court found 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].

The court's Judgment includes three primary forms of relief: (1) remediation, (2) restriction on land application of poultry waste, and (3) penalties.

Defendants appealed. *See* [Doc. 3197 to Doc. 3202]. Thereafter, defendants filed a motion to stay the Judgment during the pendency of the appeal. *See* [Doc. 3203].

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. [Doc. 3241].

The State and George's now represent that they have negotiated a settlement in the form of a Consent Judgment. The settling parties ask the court to approve and enter the proposed Consent Judgment, which, if entered, would "supersede[] and replace[] the Judgment" as to George's. [Doc. 3229].

The U.S. Court of Appeals for the Tenth Circuit has recognized that "[t]he district court . . . is not obliged to approve every proposed consent decree placed before it." *United States v. Colorado*, 937 F.2d 505, 509 (10th Cir. 1991). "Because the issuance of a consent decree places the power of the court behind the compromise struck by the parties, the district court must ensure that the agreement is not illegal, a product of collusion, or against the public interest." *Id.* Further,

the court must determine “whether the decree is fair, adequate, and reasonable before it is approved.” *Id.*

Having reviewed the proposed Consent Judgment [Doc. 3229-1], the court concludes that additional information is necessary to ensure that the agreement is not “against the public interest” and “is fair, adequate, and reasonable.” *See Colorado*, 937 F.2d at 509. Accordingly, the motion for entry of consent judgment shall be set for hearing. During the hearing, the parties shall be prepared to address the following topics, among others that may arise:

- The proposed Monetary Relief Fund [Doc. 3229-1, p. 5, ¶ 4], including who controls the Fund, its relationship to the evergreen fund contemplated by the Judgment [Doc. 3192, p. 19, § 3.n.], and permissible uses of the monies deposited therein;
- The proposed Litter Removal Commitments [Doc. 3229-1, pp. 6-7, ¶¶ 6-7], and their relationship, if any, to Soil Test Phosphorus (STP) restrictions;
- The proposed direct payment of \$250,000 to the State “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 of Paragraph 6,” [Doc. 3229-1, p. 10, ¶ 12], including who controls the escrow account, its relationship to the evergreen fund contemplated by the Judgment [Doc. 3192, p. 19, § 3.n.], and costs of future compliance once the escrow account is exhausted; and
- The proposed payments to the State for a Material violation of the land application restrictions of Paragraph 6 [Doc. 3229-1, p. 12, ¶ 14], including the account/fund into which such monies are to be deposited and who controls that account/fund;

- The proposed release and discharge of nonparties that are or were previously under contract with George's and related entities for the production or care of poultry or eggs in the Illinois River Watershed [Doc. 3229-1, p. 14, ¶ 19]; and
- The proposed agreement by the State to "a reduction of any damages awarded against other defendants to this lawsuit on a joint and several basis to the extent of the pro-rata share of the liability of the Released Parties," [Doc. 3229-1, p. 15, ¶ 21], given that the court did not impose a traditional damages award.

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. is set for hearing on Monday, February 2, 2026 at 1:30 p.m.

IT IS SO ORDERED this 23rd day of January, 2026.


GREGORY K. FRIZZELL
UNITED STATES DISTRICT JUDGE

**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.)

Case No. 05-CV-00329-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.)

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”).

On December 19, 2025, the court entered Judgment 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.

The State and George’s subsequently filed the Joint Motion for Entry of Consent Judgment. [Doc. 3229]. The State and George’s represent that they have negotiated a settlement in the form of a Consent Judgment, which, if entered, would “supersede[] and replace[] the Judgment” as to George’s. [Doc. 3229]. Accordingly, pursuant to Federal Rule of Civil Procedure 60(b)(5), the parties seek relief from the court’s December 19 Judgment. [*Id.* at p. 1]. The motion is set for hearing on Friday, February 27, 2026, at 1:30 p.m. [Doc. 3263].

“Rule 60(b)(5) 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 v. Los Lunas Cmty. Program*, 880 F.3d 1176, 1192 (10th Cir. 2018) (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)).

The parties rely on Rule 60(b)(5)’s provision that permits relief where “the judgment has been . . . released.” Fed. R. Civ. P. 60(b)(5). However, that provision applies when the “movant has satisfied each obligation set forth in” the judgment. *Cf. Jackson*, 880 F.3d at 1201. George’s has not satisfied all of its obligations under the December 19 Judgment and the parties no case law applying the provision under similar circumstances. Nor do the parties cite or discuss any other provision of Rule 60(b).

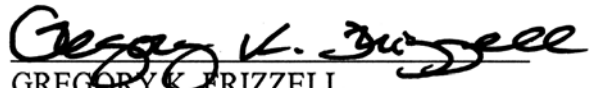
Further, the parties have not analyzed the applicability, if any, of *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18 (1994). In that decision, the U.S. Supreme Court held that “mootness by reason of settlement” generally “does not justify vacatur of a judgment.” *U.S. Bancorp Mortg. 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.*

For the foregoing reasons, supplemental briefing is necessary in advance of the February 27 hearing.

WHEREFORE, on or before February 19, 2026, the parties shall file a supplemental brief, limited to fifteen pages, addressing the issues raised in this Order.

IT IS SO ORDERED this 5th day of February, 2026.


GREGORY K. FRIZZELL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ET AL.,

Plaintiffs,

v.

TYSON FOODS, INC. ET AL.,

Defendants.

Case No. 4:05-CV-00329-GKF-SH

JOINT MOTION FOR ENTRY OF CONSENT JUDGMENT
AND REQUEST FOR INDICATIVE RULING

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, “Plaintiffs”) and Defendants Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc. (collectively “Tyson” and together with the Plaintiffs, the “Parties to Settlement”) move this Court to issue an indicative ruling under Federal Rule of Civil Procedure 62.1(a)(3) that it would approve and enter judgment consistent with the attached Consent Judgment if the Tenth Circuit remands for that purpose. *See* Exhibit 1.

Pursuant to Federal Rule of Civil Procedure 60(b), the Parties to Settlement hereby seek relief from the Court’s December 19, 2025 Final Judgment as the Parties to Settlement have agreed upon a Consent Judgment. The agreement that the Parties to Settlement have reached constitutes a change in circumstances that has been carefully crafted by the Parties to Settlement to achieve the purpose of remedying the harms alleged by the State while also taking into consideration the litigation risks of the current appeal. In light of these considerations, enforcement of the December 19, 2025 Final Judgment is no longer equitable. Fed. R. Civ. P. 60(b)(5)-(6).¹

¹ Supplemental briefing is forthcoming as ordered by the Court on February 5, 2026 with respect to the proposed consent judgment filed by the State and the George’s defendants. *See* Doc. 3265.

The notice of appeal “divest[ed] th[is] court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). But Rule 62.1(a)(3) authorizes the Court to consider the Parties’ Rule 60(b) motion and “state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.” The Tenth Circuit may then remand for further proceedings before this Court, clearing the way for entry of the Consent Judgment. *See* Fed. R. App. P. 12.1(b); 28 U.S.C. §2106. Thus, the Parties to Settlement respectfully request that this Court issue an indicative ruling stating that it would approve and enter the Consent Judgment upon remand.

In support, the Parties to Settlement show the Court the following:

1. On January 18, 2023, this Court issued Findings of Fact and Conclusions of Law, finding “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.” Doc. 2979 at 213. As part of its Findings of Fact and Conclusions of Law, the Court directed parties to “meet and attempt to reach an agreement with regard to remedies to be imposed in this action.” *Id.*

2. In December 2024, the Parties to Settlement and the other Defendants appeared before this Court in a six-day evidentiary hearing. After a review of the evidence presented, the Court entered its Opinion and Order, “fully incorporat[ing]” its January 18, 2023 Findings of Fact and Conclusions of Law, and finding, among other things, that “the conditions of the IRW have not materially changed since trial” Doc. 3161 at 2, 6–7.

The Parties to Settlement anticipate similarly submitting supplemental briefing on the issues identified by the Court in Doc. 3265.

3. On December 19, 2025, this Court entered Final Judgment in favor of the State 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. *See* Doc. 3192 at 5. Additionally, the Court issued a permanent injunction against all Defendants in this case. *Id.* at 6–7.

4. Ten days later, on December 29, 2025, Tyson filed its Notice of Appeal of the Court's Final Judgment to the Tenth Circuit. Doc. 3199.

5. That same day, Tyson, jointly with the other Defendants, moved to stay the Judgment pending appeal. Doc. 3203.

6. On January 16, 2026, this Court stayed the monetary portions of the Judgment but declined to stay the injunctive portions. Doc. 3241.

7. On January 20, 2026, Plaintiffs filed their Notice of Appeal to the Tenth Circuit. Doc. 3249.

8. On January 23, 2026, Tyson, jointly with the other Defendants, moved the Tenth Circuit for a stay pending appeal. *State of Oklahoma, et al. v. Tyson Foods, Inc., et al.*, Nos. 26-5000, 26-5001, 26-5002, 26-5003, 26-5004, 26-5005 (10th Cir. Jan. 23, 2026).

9. In light of this Court's issued opinions, its directives to find remedial solutions, the appeals to the Tenth Circuit, and the associated motion to stay, the Parties to Settlement have agreed to a fair, equitable, and reasonable remedial plan that will promote certainty and stability for the State, Tyson, and Tyson's contract growers moving forward. *See generally* Exhibit 1. The Parties to Settlement agree that, if approved, the attached Consent Judgment supersedes and replaces the Judgment (Doc. No. 3192) entered by the Court on December 19, 2025 as to Tyson.

10. The Parties to Settlement have negotiated the Consent Judgment in good faith and agree that the Consent Judgment is a fair, reasonable, and adequate compromise of long-contested issues, and that it is consistent with the public interest.²

11. Under Federal Rule of Civil Procedure 62.1(a), the Court may consider this motion and “certify its intention to grant the motion to the Court of Appeals, which could then entertain a motion to remand.” *United States v. Cronin*, 466 U.S. 648, 667 n.42 (1984).

CONCLUSION

The Court should issue an indicative ruling stating that it would grant the parties’ Rule 60(b) motion if the Tenth Circuit remands for that purpose.

Respectfully submitted,

/s/ Gentner Drummond
GENTNER DRUMMOND, OBA #16645
Attorney General
AMIE ELY, OBA #35840
First Assistant Attorney General
GARRY M. GASKINS, II, OBA #20212
Solicitor General
JENNIFER L. LEWIS, OBA #32819
Deputy Attorney General
OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA
313 N.E. 21st Street
Oklahoma City, OK 73105
Phone: (405) 521-3921
Jennifer.Lewis@oag.ok.gov

² If the Court sets a hearing on this Joint Motion for Entry of Consent Judgment, the Parties to Settlement respectfully request that the hearing be set for March 2, 2026, so that the Attorney General and counsel for Tyson will be available to attend. In the interest of judicial economy, the State also requests that the hearing set for February 27, 2026, regarding the consent judgment proposed by the George’s defendants and the State be held on the same date as any hearing on this Joint Motion for Entry of Consent Judgment. *See* Doc. 3229 (moving the Court to enter the consent judgment proposed by Plaintiffs and the George’s defendants); Doc. 3258 (setting hearing on joint motion for entry of consent judgment, Doc. 3229, for February 2, 2026); and Doc. 3263 (continuing the February 2, 2026, hearing to February 27, 2026). The State is amenable to the March 2, 2026, date.

M. David Riggs, OBA #7582
Kristopher E. Koepsel, OBA #19147
Riggs, Abney, Neal, Turpen, Orbison & Lewis
502 West 6th Street
Tulsa, OK 74119
(918) 587-3161

Robert A. Nance, OBA #6581
W.A. Drew Edmondson, OBA #2628
Riggs, Abney, Neal, Turpen, Orbison & Lewis
Oklahoma City, OK 73103
(405) 843-9909

Louis W. Bullock, OBA #1305
Bullock Law Firm PLLC
110 W. 7th Street
Tulsa, OK 74119
(918) 584-2001

Frederick C. Baker, admitted *pro hac vice*
Cynthia Solomon, admitted *pro hac vice*
Kristin Hermiz, admitted *pro hac vice*
Madeline Becker, admitted *pro hac vice*
Motley Rice, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29464
(843) 216-9186

Counsel for Plaintiffs

Tyson Foods, Inc., Tyson Poultry Inc., Tyson Chicken, Inc., and Cobb-Vantress Inc.

/s/ Gordon D. Todd

Mark D. Hopson
Frank R. Volpe
Gordon D. Todd
Peter A. Bruland
Cody M. Akins
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, DC 20005
(202) 736-8000
mhopson@sidley.com
fvolpe@sidley.com
gtodd@sidley.com
pbruland@sidley.com
caking@sidley.com

A. Scott McDaniel
McDaniel Acord, PLLC
9343 East 95th Court
Tulsa, OK 74133
(918) 382-9200
smcdaniel@ok-counsel.com

*Counsel for Defendants Tyson Foods, Inc.,
Tyson Chicken, Inc., Tyson Poultry, Inc., and
Cobb-Vantress, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2026, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants with entries of appearance filed of record.

/s/ Gentner Drummond

GENTNER DRUMMOND
Attorney General

Exhibit 1

**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.

CONSENT JUDGMENT

A. 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, “Plaintiffs”) filed a civil Complaint on June 13, 2005 alleging that Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., and Cobb-Vantress, Inc. (collectively “Tyson”) and various other defendants degraded and impaired the lands, waters, and other natural resources of the Illinois River Watershed (“IRW”). For the avoidance of doubt, the 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. In this Consent Judgment, IRW 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 IRW includes the 12,900-acre Tenkiller Ferry Lake. State's Ex. 3351 at OSU0005174.

B. After decades of litigation, Plaintiffs and Tyson (the "Parties"; singularly a "Party") have agreed to the entry of this consent judgment ("Consent Judgment") in full settlement of all claims that were brought or could have been brought against Tyson in the above-styled proceedings. As to Tyson, this Consent Judgment supersedes and replaces the Judgment (Doc. No. 3192) entered by the Court on December 19, 2025 (the "December 19, 2025, Judgment"). Tyson does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the Complaint. This Consent Judgment shall not be used against Tyson 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.

C. The Parties agree, and the Court by entering this Consent Judgment finds, that this Consent Judgment, and the remedial and monetary obligations thereunder, address only the acts or omissions of Tyson, as alleged in the Complaint, and do not address the alleged acts and omissions of any other person or entity, aside from those expressly released herein.

D. The Parties agree, and the Court by entering this Consent Judgment finds, that this Consent Judgment has been negotiated by the Parties in good faith and the terms memorialized in this Consent Judgment will avoid further prolonged and complex litigation and appeal between the Parties.

E. This Consent Judgment constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Judgment, and the Parties acknowledge that there are no representations, agreements, or

understandings relating to the settlement other than those expressly contained in this Consent Judgment.

F. The Parties waive any right they may have to appeal as to each other from the December 19, 2025, Judgment and all earlier decisions by this Court, as well as from this Consent Judgment and from any order adopting it, provided that no substantive changes are made to the Consent Judgment after it has been presented by the Parties to the Court for approval. For the avoidance of doubt, in the event that this Consent Judgment is withdrawn by the Parties prior to entry, is substantively modified by the Court without the Parties' consent, or is vacated after entry by the Court, both Parties retain the right to appeal as to each other from the December 19, 2025, Judgment and all earlier decisions by this Court. Within five (5) days of the Effective Date, Tyson will withdraw as a movant from the request(s) for a stay of the December 19, 2025 Judgment. Plaintiffs retain the right to appeal vis-à-vis other defendants, until and unless that right is extinguished by other Consent Judgments.

NOW, THEREFORE, without admission by Tyson of the allegations in the Complaint, and upon the consent and agreement of the Parties to this Consent Judgment, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action. This Court also has personal jurisdiction over the Parties. Solely for the purposes of this Consent Judgment and any enforcement of its provisions, Tyson waives all objections and defenses that it may have to jurisdiction of the Court.

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

II. EFFECTIVE DATE

3. The effective date of the Consent Judgment (the “Effective Date”) shall be the day the Court enters the Parties’ proposed Consent Judgment until and unless a Party successfully challenges it. The Parties agree to work together in good faith to achieve the entry of this proposed Consent Judgment and to oppose any efforts by others who are not Parties to this Consent Judgment to appeal, materially modify, or otherwise challenge it. The Parties also agree to make best efforts to encourage third parties to support the terms and intent of this Consent Judgment. The Parties agree to work together cooperatively to support the aims of the Consent Judgment 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. Tyson agrees not to challenge any consent judgment previously filed in this case.

III. MONETARY RELIEF AND WITHDRAWAL OF NOTICE OF APPEAL

4. Thirty (30) days after the Effective Date, provided that no appeal or objection regarding this Consent Judgment is pending on such date, Tyson will: (a) voluntarily dismiss Tyson’s notice of appeal as to the December 19, 2025, Judgment, currently pending in the U.S. Court of Appeals for the Tenth Circuit as Case No. 26-5002; and (b) make a one-time payment in the amount of \$18,050,000.00 to the State (the “Monetary Relief Fund”) for purposes including, but not limited to, remediation or conservation projects in the IRW and for payment of attorneys’ 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. In the event an appeal or objection regarding

this Consent Judgment is pending on the date that is thirty (30) days after the Effective Date, Tyson’s obligations under this Paragraph 4 will be suspended until thirty (30) days after the date when such appeal or objection is resolved, unless Tyson’s obligations under this Paragraph are no longer enforceable as a result of the appeal or objection.

5. No part of the Monetary 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.

IV. LITTER REMOVAL

6. **Litter Removal Commitments.** Tyson, through its own efforts and/or coordinated efforts with independent contract growers raising its birds, shall meet or exceed the land application restrictions contained in the chart below in this Paragraph 6 or, upon written election by Tyson, the least restrictive land application restrictions contained within any binding and enforceable consent judgment or settlement agreement between the State and any other company named as a defendant in this case that continues to raise poultry in the IRW after the Effective Date:

Time Period	Land Application Restrictions
Years 1 & 2	No more than 40% of litter removed each year from poultry houses in the IRW owned or operated by or under contract with Tyson (each an “IRW Grower” and collectively the “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. ¹
Years 3 & 4	No more than 30% of litter removed each year from poultry houses of the IRW Growers will be land applied to soils located within either the Oklahoma or Arkansas portions of the IRW.

¹ Neither this provision, nor any other provision in this Consent Judgment, allows for, or should be construed as allowing for, non-compliance with any and all applicable laws, regulations, rules, court orders, and judgments.

	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 the 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.

“Year 1” for purposes of the foregoing land application restrictions shall be the twelve (12) month period commencing on the Effective Date, and each subsequent year shall commence on the anniversary of the Effective Date and end twelve (12) months thereafter. 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 Tyson’s compliance with the litter removal requirements of this Paragraph 6. 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 restrictions unless and until such stored litter is subsequently hauled away from the farm or land applied to soils in a manner compliant with all applicable laws, regulations, rules, court orders, and judgments, including this Consent Judgment. For the calculations for showing Tyson’s compliance with the litter removal requirements of this Paragraph 6, 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. The land application restrictions described for “Years 5, 6 & 7” in the table above may be extended by mutual written agreement of the Parties, or under the conditions set forth in Paragraph 24 for additional time periods after the conclusion

of “Year 7.”

“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 Waters², whereby the waterbody is impaired for nutrient-related causes including nitrogen, phosphorus, low dissolved oxygen in lakes, or high chlorophyll-a concentrations.

7. **Covenant Not to Sue.** Provided that Tyson complies with the land application restrictions described in Paragraph 6 above, the State will not bring any claim, alleging or asserting that Tyson 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 23 and additional time periods, if any, for which the Parties mutually agree to extend the land application restrictions in accordance with Paragraph 6 above. If the Parties mutually agree to extend the land application restrictions in accordance with Paragraph 6 above, to claim the benefit of the covenant not to sue under this Paragraph 7, or pursuant to Paragraph 24, for any time period after the conclusion of “Year 7,” Tyson will provide, upon request, written records from the IRW Growers and the litter haulers demonstrating that, for the time period at issue, it has continued to meet the land application restrictions described for Year 7 in the table included in Paragraph 6.

² 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.

V. SPECIAL MASTER³

8. Within thirty (30) days after the Effective Date, the State will apply to the Court for the appointment of a special master to monitor compliance by Tyson with the applicable land application restrictions of Paragraph 6. Tyson will not oppose such appointment; however, Tyson will be afforded the opportunity to object, consistent with Paragraph 9 below, to the person or entity selected by the State. The special master will be entitled to judicial immunity in the performance of his or her duties within the scope of the special master's court-approved engagement under this Consent Judgment. Notwithstanding any provision of this Paragraph 8 or Paragraph 9 below, if, on the Effective Date or within thirty (30) days thereafter, there is a person or entity engaged by the Court as a special master with respect to a consent judgment entered into in this case between the State and another defendant, then the Court will appoint that same person or entity as the special master to monitor compliance by Tyson with the applicable restrictions of Paragraph 6 with respect to this Consent Judgment.

9. The special master shall meet the following minimum requirements: (a) knowledgeable by experience or training in agricultural practices; (b) knowledgeable by experience or training in water quality concerns related to agriculture; and (c) no prior involvement as a lawyer, witness or consultant for any party to this proceeding. The State shall confer with Tyson on the selection of the person or entity to serve as the special master. If the Parties are unable to agree on the person or entity to serve as the special master, then the State will petition

³ If Plaintiffs enter into subsequent Consent Judgments that provide for a different term to describe the role of the special master, the Parties intend that the same person or entity oversee all defendants. Further, if the Court appoints a special master under the December 19, 2025, Judgment with respect to any other defendant, the Parties intend that the same person or entity oversee all defendants, with the special master's oversight of Tyson governed by the requirements of this Consent Judgment.

the Court for approval of the person or entity selected by the State with Tyson being afforded an opportunity to submit an objection to the Court within ten (10) days of the State's petition. The Court shall be free to appoint the person or entity selected by the State for special master or any other person or entity meeting the minimum requirements for the special master, if the Court deems appropriate or necessary. Any vacancy of the special master's position occurring for any reason during the Term shall be filled in the manner described in this Paragraph 9.

10. Within sixty (60) days of the conclusion of each year included in the table in Paragraph 6, Tyson shall certify under oath compliance with the applicable land application restrictions of Paragraph 6 and provide the special master with business records and supporting documentation sufficient to substantiate such compliance.

11. Tyson shall cooperate with all reasonable requests by the special master to obtain and/or inspect records of Tyson, the IRW Growers and the haulers removing litter from the farms of IRW Growers to the extent necessary to monitor compliance with the litter application restrictions of Paragraph 6. If the special master believes that additional information is needed to assess Tyson's compliance with the terms of this Consent Judgment, he or she shall first request that information from Tyson. If Tyson does not provide the requested information to the special master's satisfaction, he or she may petition the Court, which petition shall set forth the requested information, an explanation as to why the information is needed to assess Tyson's compliance with the terms of this Consent Judgment and efforts to obtain that information from Tyson. Both Tyson and Plaintiffs may be heard regarding the request. In the event that the special master wishes to conduct an onsite inspection, the special master must show the Court by a preponderance of the evidence why such an inspection is necessary to effectuate the terms of this Consent Judgment.

12. Within thirty (30) days of the Effective Date, Tyson will arrange for direct payment of \$950,000.00 to the State 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 of Paragraph 6. The State will approve distributions from the escrow account to the special master, and, except as is provided in Paragraph 15(a), Tyson's financial obligations for cost of the special master shall be fully and finally satisfied through the \$950,000 payment described in this Paragraph 12 regardless of the actual cost of the compliance monitoring by the special master. Once the escrow account established under this Consent Judgment is exhausted, the State shall be responsible thereafter for funding any future cost of compliance monitoring by the special master, including by using funds obtained from other sources, including other defendants. Any surplus or balance remaining in the escrow account as of the termination of this Consent Judgment shall be used by the State for remediation or conservation of the IRW.

13. If the special master believes that Tyson has Materially failed to meet the land application restrictions of Paragraph 6 during the Term of this Consent Judgment, the special master shall provide written notice of the violation to Tyson and the Oklahoma Attorney General. "Material" in this context shall mean that Tyson failed to meet an applicable land application restriction of Paragraph 6 by more than five percent (5%).⁴ During the sixty-day period after providing notice, the special master shall make himself or herself reasonably available to meet with Tyson and the Oklahoma Attorney General to discuss the substance of the alleged violation, including but not limited to the reason(s) for the special master's belief that Tyson is in violation,

⁴ By way of illustration only, during Year 1, if 100,000 tons of litter was removed from the houses of the IRW Growers, 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 Tyson would have Materially failed to meet the land applications restrictions of Paragraph 6.

and the special master shall consider in good faith any additional evidence or arguments that Tyson chooses to submit to demonstrate its compliance with this Consent Judgment and any additional evidence or arguments that the State chooses to submit to demonstrate non-compliance with this Consent Judgment.

14. If, after considering any additional evidence or arguments presented by Tyson and the State, the special master concludes that a Material violation of the land application restrictions of Paragraph 6 occurred, then Tyson will make a one-time payment to the State equal to the sum of (1) \$10,000 plus (2) \$30/ton for each ton of litter that produced the violation.⁵ Any payment to the State for a Material violation of the land application restrictions of Paragraph 6 will be used for remediation or conservation projects in the IRW or will be used to pay for the services of the special master at the State's sole discretion.

15. If Tyson disputes the existence of a Material violation or the calculation of a penalty amount, Tyson may, within thirty (30) days of the issuance of a penalty demand, petition the Court to resolve any such dispute. Tyson shall pay any undisputed amount before petitioning the Court but may withhold payment of any disputed amount until thirty (30) days after the determination is made without incurring any interest or further penalty provided the Court determines that the dispute was instituted in good faith. The Court may award reasonable attorneys' fees and costs to the prevailing party in a proceeding initiated under this Paragraph 15.

- a. If, as the result of one or more Material violations by Tyson of the land application restrictions contained in Paragraph 6, the Oklahoma Attorney General concludes that the remaining balance in the escrow account described in Paragraph 12 is not

⁵ By way of an illustration only, if 5,000 tons of litter more than was permitted under Paragraph 6 was land applied in the IRW, then the stipulated penalty for that violation would be \$160,000 computed as follows: \$10,000 + (5,000 tons x \$30).

sufficient to permit the special master to fully discharge his or her duties under this Consent Judgment, the Oklahoma Attorney General may petition the Court to order Tyson to contribute additional funds to the escrow account up to an aggregate maximum of an additional \$325,000.00. In support of such a petition, it shall be the Oklahoma Attorney General's burden to establish, by a preponderance of the evidence, both (i) that one or more Material violations by Tyson of the land application restrictions contained in Paragraph 6 have caused the remaining balance in the escrow account described in Paragraph 12 to be insufficient to permit the special master to fully discharge his or her duties under this Consent Judgment, and (ii) the amount of additional funding needed to permit the special master to fully discharge his or her duties under this Consent Judgment.

16. The special master shall annually prepare a report describing the status of Tyson's compliance with the provisions of this Consent Judgment including progress toward and/or satisfaction of the land application restrictions set forth in Paragraph 6, any Material violation of the land application restrictions set forth in Paragraph 6, and any penalty demands. Such reports shall be delivered to the Oklahoma Attorney General and to the Court. The annual reports required under this Paragraph 16 shall be treated by the State and the Court as public records provided that no information specifically identifying the name or location of poultry farms or landowners is contained within such reports.

VI. STATE NUTRIENT MANAGEMENT LAWS NOT SUPERSEDED

17. Litter applications occurring within the IRW during the Term of the Consent Judgment, if any, and applications occurring after the expiration of the Term of the Consent Judgment will remain 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. The special master shall have no authority to investigate, enforce or monitor compliance with legal requirements applicable to poultry litter or agricultural operations other than the land application restrictions agreed to by the Parties as set forth in Paragraph 6 of this Consent Judgment.

VII. EFFECT OF SETTLEMENT AND RELEASE

18. This settlement is conditioned upon the approval of the Consent Judgment by the Court. 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 (“Releasing Parties”) shall fully, finally, and forever release, relinquish and discharge Tyson 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 Tyson (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 Consent Judgment under the provisions of the December 19, 2025, Judgment are Released Claims for purposes of this Consent Judgment. 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 Consent Judgment 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 Consent Judgment. 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.

19. The Parties agree the IRW Growers were never sued by the State in this lawsuit. However, for the avoidance of doubt, as of the Effective Date, the Releasing Parties shall fully, finally, and forever release, relinquish and discharge 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 (the “Released IRW Growers”) from any Released Claim. The Releasing Parties further agree that they will not file, or encourage others to file or pursue, any claim against the Released IRW Growers arising out of, or relating to, the Released Claims. However, in the event a non-party to this Consent Judgment files or pursues any claim against the Released IRW Growers 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 the terms of this Consent Judgment. 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. The Released Parties agree not to use this Consent Judgment as the reason or basis for any decision not to renew contracts with Released IRW Growers. Notwithstanding the preceding sentence, nothing in this Consent Judgment obligates the Released Parties to renew or extend any contract with any particular Released IRW Growers.

20. As of the Effective Date, all claims asserted in this action by Tyson against third party defendants shall be dismissed from the case with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A).

21. 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. Therefore, in consideration of the payments and commitments by Tyson specified in this Consent Judgment, the State agrees to a reduction of any damages awarded against other defendants to this lawsuit on a joint and several basis to the extent of the pro-rata share of the liability of 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 further agrees and intends that this Consent Judgment 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.

VIII. ATTORNEYS' FEES AND COSTS

22. Provided that this Consent Judgment is entered without material modification of the terms negotiated by the Parties and is not thereafter successfully challenged or vacated, Tyson

waives and releases any right available to it at law to seek to recover its attorneys' fees, costs and expenses incurred in connection with this lawsuit from the State. The State reserves the right to apply to the Court, at an appropriate time, for an award of its attorneys' fees and litigation costs incurred in connection with this lawsuit. The State further 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 between the State and Tyson. The Parties agree, however, that Tyson's liability under any award or determination for costs or attorneys' fees by the Court, including by not limited to any award arising from the December 19, 2025, Judgment, has been fully satisfied and released under the terms of this Consent Judgment, provided that this Consent Judgment is not successfully challenged. For the avoidance of doubt, the Parties further agree that Tyson'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 the State, has been fully satisfied and released under the terms of this Consent Judgment.

IX. TERM AND TERMINATION

23. Unless extended by the Court in accordance with Paragraph 24, the obligations of Tyson under the Consent Judgment and the Court's continuing jurisdiction over this settlement will automatically terminate seven (7) years from the Effective Date ("Term").

24. Prior to expiration of the Term, the State may petition the Court to retain jurisdiction beyond the Term only upon a showing by clear and convincing evidence that Tyson has materially violated the provisions of this Consent Judgment and has failed or refused to adequately cure or remedy such violations within a reasonable time following Tyson's receipt of written notice of such violations. The State shall bear the burden of proof as to any petition asking for a continuation

of the Court's jurisdiction beyond the Term. If the State prevails on such petition, the Court shall retain jurisdiction to the extent necessary for Tyson to cure or remedy the violations proven by the State and the provisions of this Consent Judgment will remain in force until Tyson shows by clear and convincing evidence that Tyson has cured or remedied such violations.

X. NOTICE

25. Any notice, report, or other communication required or permitted under this Consent Decree 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
(405) 521-3921
gentner.drummond@oag.ok.gov
amie.ely@oag.ok.gov
garry.gaskins@oag.ok.gov
jennifer.lewis@oag.ok.gov
IRW-poultry-settlement@oag.ok.gov

To Tyson:

Gordon D. Todd
Sidley Austin LLP
1501 K Street, NW
Washington, DC 20005
(202) 736-8000
gtodd@sidley.com

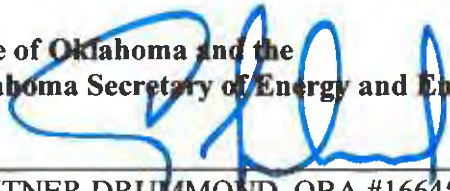
-and-

John M. Tanski
Stuart L. Spencer
Katherine A. Clements
Wesley W. Wiechman
Tyson Foods, Inc.
2200 West Don Tyson Parkway
Springdale, Arkansas 72762
(479) 290-4000
john.tanski@tyson.com
stuart.spencer@tyson.com
katherine.clements@tyson.com
wesley.wiechman@tyson.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 25.

XI. SIGNATORIES

26. Each Undersigned signatory certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Judgment and to execute and legally bind such Party to this document.


State of Oklahoma and the
Oklahoma Secretary of Energy and Environment

GENTNER DRUMMOND, OBA #16645

Attorney General

AMIE ELY, OBA #35840

First Assistant Attorney General

GARRY M. GASKINS, II, OBA #20212

Solicitor General

JENNIFER L. LEWIS, OBA #32819

Deputy Attorney General

OFFICE OF ATTORNEY GENERAL STATE OF OKLAHOMA

313 N.E. 21st Street

Oklahoma City, OK 73105

Direct: (405) 521-3921

gentner.drummond@oag.ok.gov

M. David Riggs, OBA #7583

Kristopher E. Koepsel, OBA #19147

Riggs, Abney, Neal, Turpen, Orbison & Lewis

502 West 6th Street

Tulsa, OK 74119

(918) 587-3161

Robert A. Nance, OBA #6581

W.A. Drew Edmondson, OBA #2628

Riggs, Abney, Neal, Turpen, Orbison & Lewis

528 N.W. 12th Street

Oklahoma City, OK 73103

(405) 843-9909

Louis W. Bullock, OBA #1305

Bullock Law Firm PLLC

110 W. 7th Street

Tulsa, OK 74119

(918) 584-2001

Frederick C. Baker, admitted *pro hac vice*

Cynthia Solomon, admitted *pro hac vice*

Kristin Hermiz, admitted *pro hac vice*

Madeline Becker, admitted *pro hac vice*

Motley Rice LLC

28 Bridgeside Boulevard

Mount Pleasant, SC 29464

(843) 216-9186

Counsel for Plaintiffs

Tyson Foods, Inc., Tyson Poultry Inc., Tyson Chicken, Inc., and Cobb-Vantress Inc.



2/11/26
Mark D. Hopson
Frank R. Volpe
Gordon D. Todd
Peter A. Bruland
Cody M. Akins
SIDLEY AUSTIN LLP
1501 K Street, NW
Washington, DC 20005
(202) 736-8000
mhopson@sidley.com
fvolpe@sidley.com
gtodd@sidley.com
pbruland@sidley.com
caking@sidley.com

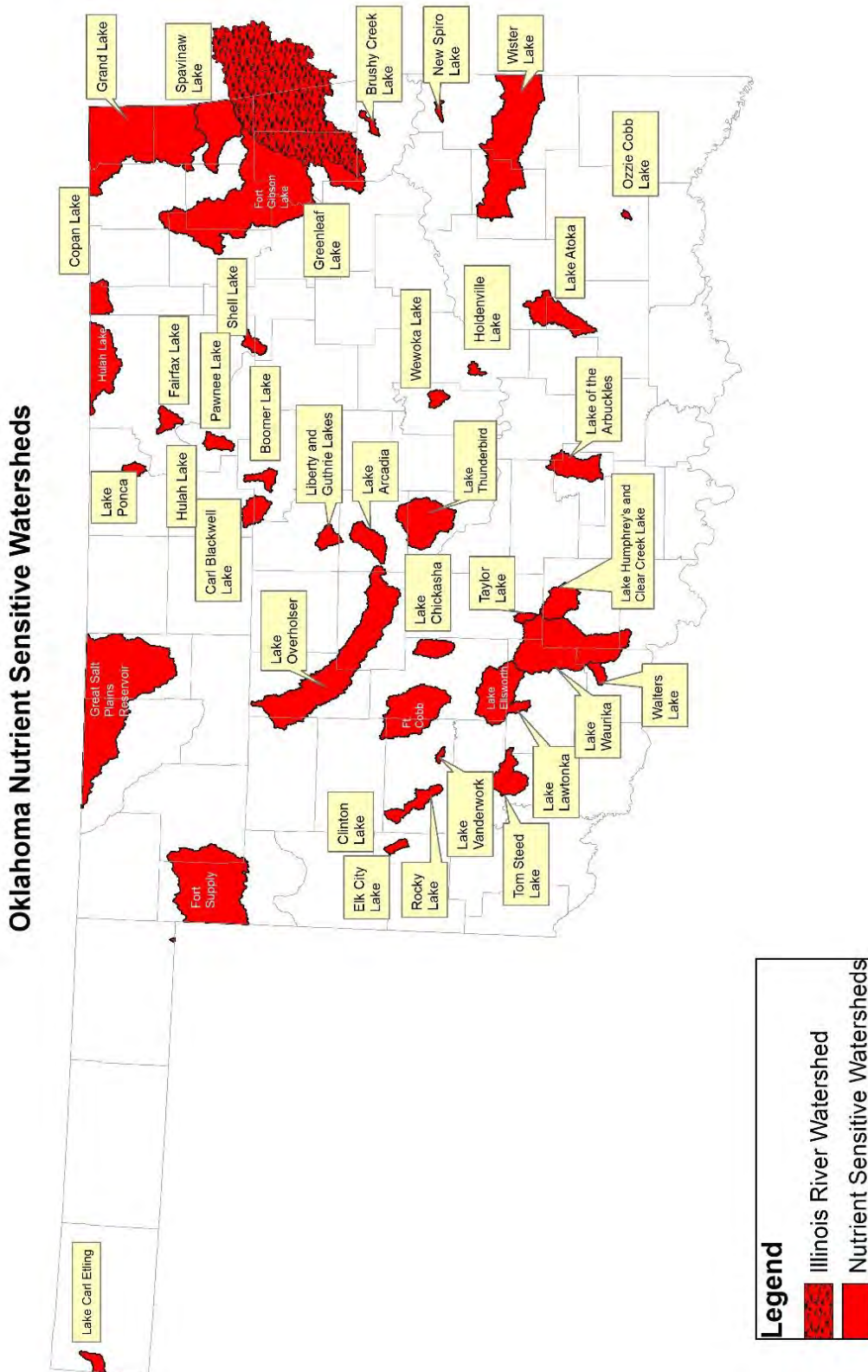
A. Scott McDaniel
McDaniel Acord, PLLC
9343 East 95th Court
Tulsa, OK 74133
(918) 382-9200
smcdaniel@ok-counsel.com

Counsel for Defendants Tyson Foods, Inc., Tyson Chicken, Inc., Tyson Poultry, Inc., and Cobb-Vantress, Inc.

IT IS SO ORDERED this _____ day of February 2026.

HON. GREGORY K. FRIZZELL
UNITED STATES DISTRICT JUDGE

ATTACHMENT A



UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ET AL.,

Plaintiffs,

v.

TYSON FOODS, INC. ET AL.,

Defendants.

Case No. 4:05-CV-00329-GKF-SH

JOINT MOTION FOR ENTRY OF CONSENT JUDGMENT
AND REQUEST FOR INDICATIVE RULING

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, “Plaintiffs”) and Defendants Cargill Incorporated and Cargill Turkey Production, LLC (collectively “Cargill” and together with the Plaintiffs, the “Parties to Settlement”) move this Court to issue an indicative ruling under Federal Rule of Civil Procedure 62.1(a)(3) that it would approve and enter judgment consistent with the attached Consent Judgment if the Tenth Circuit remands for that purpose. *See* Exhibit 1.

Pursuant to Federal Rule of Civil Procedure 60(b), the Parties to Settlement hereby seek relief from the Court’s December 19, 2025 Final Judgment as the Parties to Settlement have agreed upon a Consent Judgment. The agreement that the Parties to Settlement have reached constitutes a change in circumstances that has been carefully crafted by the Parties to Settlement to achieve the purpose of remedying the harms alleged by the State while also taking into consideration the litigation risks of the current appeal. In light of these considerations, enforcement of the December 19, 2025 Final Judgment is no longer equitable. Fed. R. Civ. P. 60(b)(5)-(6).¹

¹ Supplemental briefing is forthcoming as ordered by the Court on February 5, 2026 with respect to the proposed consent judgment filed by the State and the George’s defendants. *See* Doc. 3265. The Parties to Settlement anticipate similarly submitting supplemental briefing supporting their settlement.

The notice of appeal “divest[ed] th[is] court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982). But Rule 62.1(a)(3) authorizes the Court to consider the Parties’ Rule 60(b) motion and “state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.” The Tenth Circuit may then remand for further proceedings before this Court, clearing the way for entry of the Consent Judgment. *See* Fed. R. App. P. 12.1(b); 28 U.S.C. §2106. Thus, the Parties to Settlement respectfully request that this Court issue an indicative ruling stating that it would approve and enter the Consent Judgment upon remand.

In support, the Parties to Settlement show the Court the following:

1. On January 18, 2023, this Court issued Findings of Fact and Conclusions of Law, finding “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.” Doc. 2979 at 213. As part of its Findings of Fact and Conclusions of Law, the Court directed parties to “meet and attempt to reach an agreement with regard to remedies to be imposed in this action.” *Id.*

2. In December 2024, the Parties to Settlement and the other Defendants appeared before this Court in a six-day trial. After a review of the evidence presented, the Court entered its Opinion and Order, “fully incorporat[ing]” its January 18, 2023 Findings of Fact and Conclusions of Law, and finding, among other things, that “the conditions of the IRW have not materially changed since trial” Doc. 3161 at 2, 6–7.

3. On December 19, 2025, this Court entered Final Judgment in favor of the State 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. *See* Doc. 3192

at 5. Additionally, the Court issued a permanent injunction against all Defendants in this case. *Id.* at 6–7.

4. Ten days later, on December 29, 2025, Cargill filed its Notice of Appeal of the Court’s Final Judgment to the Tenth Circuit. Doc. 3198.

5. That same day, Cargill, jointly with the other Defendants, moved to stay the Judgment pending appeal. Doc. 3203.

6. On January 16, 2026, this Court stayed the monetary portions of the Judgment but declined to stay the injunctive portions. Doc. 3241.

7. On January 20, 2026, Plaintiffs filed their Notice of Appeal to the Tenth Circuit. Doc. 3249.

8. On January 23, 2026, Cargill, jointly with the other Defendants, moved the Tenth Circuit for a stay pending appeal. *State of Oklahoma, et al. v. Tyson Foods, Inc., et al.*, Nos. 26-5000, 26-5001, 26-5002, 26-5003, 26-5004, 26-5005 (10th Cir. Jan. 23, 2026).

9. In light of this Court’s issued opinions, its directives to find remedial solutions, the appeals to the Tenth Circuit, and the associated motion to stay currently pending in the Tenth Circuit and the related uncertainties it creates, the Parties to Settlement have agreed to a fair, equitable, and reasonable remedial plan that will promote certainty and stability for the Parties to Settlement. *See generally* Exhibit 1. The Parties to Settlement agree that, if approved, the attached Consent Judgment supersedes and replaces the Judgment (Doc. No. 3192) entered by the Court on December 19, 2025 as to Cargill.

10. The Parties to Settlement have negotiated the Consent Judgment in good faith and agree that the Consent Judgment is a fair, reasonable, and adequate compromise of long-contested issues, and that it is consistent with the public interest.²

11. Under Federal Rule of Civil Procedure 62.1(a), the Court may consider this motion and “certify its intention to grant the motion to the Court of Appeals, which could then entertain a motion to remand.” *United States v. Cronin*, 466 U.S. 648, 667 n.42 (1984).

CONCLUSION

The Court should issue an indicative ruling stating that it would grant the parties’ Rule 60(b) motion if the Tenth Circuit remands for that purpose.

Respectfully submitted,

/s/ Gentner Drummond
GENTNER DRUMMOND, OBA #16645
Attorney General
AMIE ELY, OBA #35840
First Assistant Attorney General
GARRY M. GASKINS, II, OBA #20212
Solicitor General
JENNIFER L. LEWIS, OBA #32819
Deputy Attorney General
OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA
313 N.E. 21st Street

² The Court may simply enter an order indicating that it would grant the motion if the Tenth Circuit remands for that purpose, Fed. R. Civ. P. 62.1(a)(3), at which point Cargill and the State will move in the Tenth Circuit for a limited remand, as permitted under Federal Rule of Appellate Procedure 12.1. But if the Court sets a hearing on this motion before granting it, the Parties to Settlement respectfully request that the hearing be set for March 2, 2026 or a date thereafter that works for all parties and counsel in a similar posture, so that the Attorney General and counsel for Cargill will be available to attend. In the interest of judicial economy, the State also requests that the hearing set for February 27, 2026, regarding the consent judgment proposed by the George’s defendants and the State be held on the same date as any hearing on this motion. *See* Doc. 3229 (moving the Court to enter the consent judgment proposed by Plaintiffs and the George’s defendants); Doc. 3258 (setting hearing on joint motion for entry of consent judgment, Doc. 3229, for February 2, 2026); and Doc. 3263 (continuing the February 2, 2026, hearing to February 27, 2026). The State is amenable to the March 2, 2026, date.

Oklahoma City, OK 73105
Phone: (405) 521-3921
Jennifer.Lewis@oag.ok.gov

M. David Riggs, OBA #7582
Kristopher E. Koepsel, OBA #19147
Riggs, Abney, Neal, Turpen, Orbison & Lewis
502 West 6th Street
Tulsa, OK 74119
(918) 587-3161

Robert A. Nance, OBA #6581
W.A. Drew Edmondson, OBA #2628
Riggs, Abney, Neal, Turpen, Orbison & Lewis
Oklahoma City, OK 73103
(405) 843-9909

Louis W. Bullock, OBA #1305
Bullock Law Firm PLLC
110 W. 7th Street
Tulsa, OK 74119
(918) 584-2001

Frederick C. Baker, admitted *pro hac vice*
Cynthia Solomon, admitted *pro hac vice*
Kristin Hermiz, admitted *pro hac vice*
Madeline Becker, admitted *pro hac vice*
Motley Rice, LLC
28 Bridgeside Boulevard
Mount Pleasant, SC 29464
(843) 216-9186

Counsel for Plaintiffs

**Cargill Incorporated and Cargill Turkey
Production, LLC**

/s/ John H. Tucker

John H. Tucker, OBA #9110
Colin H. Tucker, OBA #16325
Rhodes, Hieronymus, Jones, Tucker & Gable,
PLLC
2 W. 2nd St., #1000
Tulsa, OK 74103
(918) 582-1173

Christopher H. Dolan, admitted *pro hac vice*
Jeffrey P. Justman, admitted *pro hac vice*
Aaron D. Van Oort, admitted *pro hac vice*
Jacob D. Bylund, admitted *pro hac vice*
Faegre Drinker Biddle & Reath LLP
2200 Wells Fargo Center, 90 South Seventh
Street
Minneapolis, Minnesota 55402, USA

On Behalf of the Defendants,
Cargill Incorporated and Cargill Turkey
Production, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February, 2026, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the ECF registrants with entries of appearance filed of record.

/s/ Gentner Drummond

GENTNER DRUMMOND

Attorney General

Exhibit 1

**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.

CONSENT JUDGMENT

A. 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, “Plaintiffs”) filed a civil Complaint on June 13, 2005 alleging that Cargill, Inc. and Cargill Turkey Production, LLC (collectively “Cargill”) and various other defendants degraded and impaired the lands, waters, and other natural resources of the Illinois River Watershed (“IRW”). For the avoidance of doubt, the 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. In this Consent Judgment, IRW 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 IRW includes the 12,900 acre Tenkiller Ferry Lake. State’s Ex. 3351 at OSU0005174.

B. After decades of litigation, Plaintiffs and Cargill (the “Parties”; singularly a “Party”) have agreed to the entry of this consent judgment (“Consent Judgment”) in full settlement of all claims that were brought or could have been brought against Cargill in the above-styled proceedings. As to Cargill, this Consent Judgment supersedes and replaces the Judgment (Doc. No. 3192) entered by the Court on December 19, 2025 (the “December 19, 2025, Judgment”). Cargill does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the Complaint. This Consent Judgment shall not be used against Cargill 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.

C. The Parties agree, and the Court by entering this Consent Judgment finds, that this Consent Judgment, and the remedial and monetary obligations thereunder, address only the acts or omissions of Cargill, as alleged in the Complaint, and do not address the alleged acts and omissions of any other person or entity, aside from those expressly released herein.

D. The Parties agree, and the Court by entering this Consent Judgment finds, that this Consent Judgment has been negotiated by the Parties in good faith and the terms memorialized in this Consent Judgment will avoid further prolonged and complex litigation and appeal between the Parties.

E. This Consent Judgment constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Judgment, and the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Judgment.

F. The Parties waive any right they may have to appeal as to each other from the December 19, 2025, Judgment and all earlier decisions by this Court, as well as from this Consent Judgment as submitted. For the avoidance of doubt, if this Consent Judgment is not adopted as submitted, both Parties retain the right to appeal as to each other from the December 19, 2025, Judgment and all earlier decisions by this Court. If this Consent Judgment is not adopted as submitted, both Parties agree to work together in good faith to negotiate and submit a Consent Decree that meets the Court's approval. Within five (5) days of the Effective Date, Cargill will withdraw as a movant from the request(s) for a stay of the December 19, 2025, Judgment. Plaintiffs retain the right to appeal vis-à-vis other Defendants, until and unless that right is extinguished by other Consent Judgments.

NOW, THEREFORE, without admission by Cargill of the allegations in the Complaint, and upon the consent and agreement of the Parties to this Consent Judgment, it is hereby **ORDERED, ADJUDGED, and DECREED** as follows:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action. This Court also has personal jurisdiction over the Parties. Solely for the purposes of this Consent Judgment and any enforcement of its provisions, Cargill waives all objections and defenses that it may have to jurisdiction of the Court.

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

II. EFFECTIVE DATE

3. The effective date of the Consent Judgment (the “Effective Date”) shall be the day the Court enters the Parties’ proposed Consent Judgment. The Parties agree to work together in good faith to achieve the entry of this proposed Consent Judgment as submitted and to oppose any efforts by others who are not Parties to this Consent Judgment to challenge it. The Parties also agree to make best efforts to encourage third parties to support the terms and intent of this Consent Judgment. The Parties agree to work together cooperatively to support the aims of the Consent Judgment 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. Cargill agrees not to challenge any consent judgment previously filed in this case.

III. MONETARY RELIEF AND WITHDRAWAL OF NOTICE OF APPEAL

4. Thirty-five (35) days after the Effective Date, provided that no appeal or objection regarding this Consent Judgment is pending on such date and that Plaintiffs have provided Cargill with the account information and other information it requires to make the payment to them, Cargill will: (a) voluntarily dismiss Cargill’s appeal as to the December 19, 2025, Judgment, currently pending in the U.S. Court of Appeals for the Tenth Circuit as Case No. 26-5001; and (b) make a one-time payment in the amount of \$6,175,000.00 to the State (the “Monetary Relief Fund”) 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. In the event an appeal or objection regarding this Consent Judgment is pending on the date that is thirty-five (35) days after the Effective Date, Cargill’s obligations under this Paragraph 4 will be suspended

until thirty (30) days after the date when such appeal or objection is resolved, unless Cargill's obligations under this Paragraph are no longer enforceable as a result of the appeal or objection.

5. No part of the Monetary 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.

IV. LITTER REMOVAL

6. **Litter Removal Commitments.** Cargill, through its own efforts and/or coordinated efforts with independent contract growers raising its birds, shall meet or exceed the following requirements after the Effective Date¹:

Time Period	Land Application Restrictions
Years 1 & 2	No more than 20% of litter removed each year from poultry houses in the IRW owned or operated by or under contract with Cargill (each an "Cargill IRW Grower" and collectively the "Cargill 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 any Oklahoma Nutrient Sensitive Watershed ("ONSW") defined below.²
Years 3 & 4	No more than 10% of litter removed each year from poultry houses of the Cargill 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 any ONSW.
Years 5-10	No more than 5% of litter removed each year from poultry houses of the Cargill 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 any ONSW.

¹ 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.

² Neither this provision, nor any other provision in this Consent Judgment, allows for, or should be construed as allowing for, non-compliance with any and all applicable laws, regulations, rules, court orders, and judgments.

“Year 1” for purposes of the foregoing land application restrictions 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. 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 Cargill IRW Growers. If the weight of a load of litter removed from a house of a Cargill IRW Grower cannot be reasonably determined using a scale, such litter will not be land applied in the IRW or in any other ONSW, and such litter will not be included in calculations for showing Cargill’s compliance with the litter removal requirements of this Paragraph 6. 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 restrictions unless and until such stored litter is subsequently hauled away from the farm or land applied to soils in a manner compliant with all applicable laws, regulations, rules, court orders, and judgments, including this Consent Judgment. For the calculations for showing Cargill’s compliance with the litter removal requirements of this Paragraph 6, the weight of the litter removed from a house of a Cargill 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. The land application restrictions described for “Years 5-10” in the table above may be extended by mutual written agreement of the Parties, or under the conditions set forth in Paragraph 24 for additional time periods after the conclusion of “Year 10.”

“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 Waters³, whereby the waterbody is impaired for nutrient-related causes including nitrogen, phosphorus, low dissolved oxygen in lakes, or high chlorophyll-a concentrations.

Cargill will ensure that the Cargill IRW Growers have access to sufficient poultry litter removal equipment, storage facilities, transportation methods, and disposal methods for the poultry litter generated by the Cargill IRW Growers. Cargill will pay all costs associated with such removal, storage, transportation, and disposal, and will not pass such costs on to the Cargill IRW Growers either directly or indirectly. Cargill will hold the Cargill IRW Growers harmless for the costs of removal, storage, transportation, and disposal of poultry litter generated by the Cargill IRW Growers. Further, Cargill will hold the Cargill IRW Growers harmless for any loss of income that may be attendant to Cargill taking over the responsibility for disposal of the litter in compliance with this Consent Judgment.

7. **Covenant Not to Sue.** Provided that Cargill complies with the land application restrictions described in Paragraph 6 if it has Cargill IRW Growers, the State will not bring any claim, alleging or asserting that Cargill 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 Cargill IRW Growers. The foregoing covenant not to sue shall apply for the duration of the Term specified in Paragraph 23 and additional time periods, if any, for which the Parties mutually agree to extend the land application restrictions in accordance with Paragraph 6 above. If the Parties mutually agree to extend the land application restrictions in

³ 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.

accordance with Paragraph 6 above, to claim the benefit of the covenant not to sue under this Paragraph 7, or pursuant to Paragraph 24, for any time period after the conclusion of “Year 10,” Cargill will provide, upon request, either written certification that it has no Cargill IRW Growers or written records from the Cargill IRW Growers and the litter haulers demonstrating that, for the time period at issue, it has continued to meet the land application restrictions described for Year 10 in the table included in Paragraph 6.

V. SPECIAL MASTER⁴

8. Within thirty (30) days after the Effective Date, the State will apply to the Court for the appointment of a special master to monitor compliance by Cargill with the applicable land application restrictions of Paragraph 6. Cargill will not oppose such appointment; however, Cargill will be afforded the opportunity to object, consistent with Paragraph 9 below, to the person or entity selected by the State. The special master will be entitled to judicial immunity in the performance of his or her duties within the scope of the special master’s court-approved engagement under this Consent Judgment. Notwithstanding any provision of this Paragraph 8 or Paragraph 9 below, if, on the Effective Date or within thirty (30) days thereafter, there is a person or entity engaged by the Court as a special master with respect to a consent judgment entered into in this case between the State and another defendant, then the Court will appoint that same person or entity as the special master to monitor compliance by Cargill with the applicable restrictions of Paragraph 6 with respect to this Consent Judgment.

⁴ If Plaintiffs enter into subsequent Consent Judgments that provide for a different term to describe the role of the special master, the Parties intend that the same person or entity oversee all defendants. Further, if the Court appoints a special master under the December 19, 2025, Judgment with respect to any other defendant, the Parties intend that the same person or entity oversee all defendants, with the special master’s oversight of Cargill governed by the requirements of this Consent Judgment.

9. The special master shall meet the following minimum requirements: (a) knowledgeable by experience or training in agricultural practices; (b) knowledgeable by experience or training in water quality concerns related to agriculture; and (c) no prior involvement as a lawyer, witness or consultant for any party to this proceeding. The State shall confer with Cargill on the selection of the person or entity to serve as the special master. If the Parties are unable to agree on the person or entity to serve as the special master, then the State will petition the Court for approval of the person or entity selected by the State with Cargill being afforded an opportunity to submit an objection to the Court within ten (10) days of the State's petition. The Court shall be free to appoint the person or entity selected by the State for special master or any other person or entity meeting the minimum requirements for the special master, if the Court deems appropriate or necessary. Any vacancy of the special master's position occurring for any reason during the Term shall be filled in the manner described in this Paragraph 9.

10. Within sixty (60) days of the conclusion of each year included in the table in Paragraph 6, Cargill shall certify in writing compliance with Paragraph 6, either by certifying that Cargill did not to have any Cargill IRW Growers during the relevant time period or, if Cargill has Cargill IRW Growers certifying under oath that it has met the applicable land application restrictions, and in the latter case providing the special master with business records and supporting documentation sufficient to substantiate such compliance.

11. For any period of time during the tenure of this Consent Judgment in which Cargill has Cargill IRW Growers, Cargill shall cooperate with all reasonable requests by the special master to obtain and/or inspect records of Cargill, the Cargill IRW Growers and the haulers removing litter from the farms of Cargill IRW Growers to the extent necessary to monitor compliance with the litter application restrictions of Paragraph 6. If the special master believes that additional

information is needed to assess Cargill's compliance with the terms of this Consent Judgment, he or she shall first request that information from Cargill. If Cargill does not provide the requested information to the special master's satisfaction, he or she may petition the Court, which petition shall set forth the requested information, an explanation as to why the information is needed to assess Cargill's compliance with the terms of this Consent Judgment and efforts to obtain that information from Cargill. Both Cargill and Plaintiffs may be heard regarding the request. In the event that the special master wishes to conduct an onsite inspection, the special master must show the Court by a preponderance of the evidence why such an inspection is necessary to effectuate the terms of this Consent Judgment.

12. Within thirty-five (35) days of the Effective Date, Cargill will arrange for direct payment of \$325,000.00 to the State 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 of Paragraph 6. The State will approve distributions from the escrow account to the special master. Once the escrow account established under this Consent Judgment is exhausted, the State shall be responsible thereafter for funding any future cost of compliance monitoring by the special master, including by using funds obtained from other sources, including other defendants. Any surplus or balance remaining in the escrow account as of the termination of this Consent Judgment shall be used by the State for remediation or conservation of the IRW.

13. If, during the Term of this Consent Judgment, the special master believes that Cargill has Materially failed to meet the land application restrictions of Paragraph 6 for any time when Cargill has Cargill IRW Growers, the special master shall provide written notice of the violation to Cargill and the Oklahoma Attorney General. "Material" in this context shall mean that Cargill failed to meet an applicable land application restriction of Paragraph 6 by more than five

percent (5%) for any time when Cargill has Cargill IRW Growers.⁵ If, during the Term of this Consent Judgment, the special master believes that Cargill has failed to provide written certification that it had no Cargill IRW Growers during the relevant time period, the special master shall provide written notice of the violation to Cargill and the Oklahoma Attorney General. During the sixty-day period after providing notice, the special master shall make himself or herself reasonably available to meet with Cargill and the Oklahoma Attorney General to discuss the substance of the alleged violation, including but not limited to the reason(s) for the special master's belief that Cargill is in violation, and the special master shall consider in good faith any additional evidence or arguments that Cargill chooses to submit to demonstrate its compliance with this Consent Judgment and any additional evidence or arguments that the State chooses to submit to demonstrate non-compliance with this Consent Judgment.

14. If, after considering any additional evidence or arguments presented by Cargill and the State, the special master concludes that a Material violation of the land application restrictions of Paragraph 6 or a failure to provide the written certification that Cargill had no Cargill IRW Growers during the relevant time period occurred, then Cargill will make a one-time payment to the State equal to the sum of (1) \$10,000 plus (2) \$30/ton for each ton of litter that produced the violation.⁶ Any payment to the State for a Material violation of the land application restrictions of Paragraph 6 will be used for remediation or conservation projects in the IRW or will be used to pay for the services of the special master at the State's sole discretion. If, after considering any

⁵ By way of illustration only, during Year 1, if 100,000 tons of litter was removed from the houses of the Cargill IRW Growers, and more than 21,000 tons of such litter was land applied in the IRW, in any ONSW or ONSWs, or in any combination of the IRW and any ONSW or ONSWs, then Cargill would have Materially failed to meet the land applications restrictions of Paragraph 6.

⁶ By way of an illustration only, if 5,000 tons of litter more than was permitted under Paragraph 6 was land applied in the IRW, then the stipulated penalty for that violation would be \$160,000 computed as follows: \$10,000 + (5,000 tons x \$30).

additional evidence or arguments presented by Cargill and the State, the special master concludes that Cargill has failed to provide written certification that it had no Cargill IRW Growers during the relevant time period, the special master has the discretion to direct Cargill to make a one-time payment to the State of up to \$10,000 to remedy the violation.

15. If Cargill disputes the existence of a Material violation or the calculation of a penalty amount, Cargill may, within thirty (30) days of the issuance of a penalty demand, petition the Court to resolve any such dispute. Cargill shall pay any undisputed amount before petitioning the Court but may withhold payment of any disputed amount until thirty (30) days after the determination is made without incurring any interest or further penalty provided the Court determines that the dispute was instituted in good faith. The Court may award reasonable attorney's fees and costs to the prevailing party in a proceeding initiated under this Paragraph 15. A Material violation of the land application restrictions of Paragraph 6 will also require Cargill to contribute an amount separate from the penalty amount and equal to \$325,000.00, or any lesser amount the Court concludes is necessary to effectuate the purposes of this Consent Judgment, to the escrow account described in Paragraph 12.

16. The special master shall annually prepare a report describing the status of Cargill's compliance with the provisions of this Consent Judgment including progress toward and/or satisfaction of the land application restrictions set forth in Paragraph 6, any Material violation of the land application restrictions set forth in Paragraph 6, or failure to provide a written certification if it does not have any Cargill IRW Growers during the relevant time period, and any penalty demands. Such reports shall be delivered to the Oklahoma Attorney General and to the Court. The annual reports required under this Paragraph 16 shall be treated by the State and the Court as public

records provided that no information specifically identifying the name or location of poultry farms or landowners is contained within such reports.

VI. STATE NUTRIENT MANAGEMENT LAWS NOT SUPERSEDED

17. Litter applications occurring within the IRW during the Term of the Consent Judgment, if any, and applications occurring after the expiration of the Term of the Consent Judgment will remain 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.

VII. EFFECT OF SETTLEMENT AND RELEASE

18. This settlement is conditioned upon the approval of the Consent Judgment by the Court. 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 (“Releasing Parties”) shall fully, finally, and forever release, relinquish and discharge Cargill 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 Cargill (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 Consent Judgment under the provisions of the December 19, 2025, Judgment are Released Claims for purposes of this Consent Judgment. 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 Consent Judgment 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 Consent Judgment. 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.

19. The Parties agree the Cargill IRW Growers were never sued by the State in this lawsuit. However, for the avoidance of doubt, as of the Effective Date, the Releasing Parties shall fully, finally, and forever release, relinquish and discharge 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 (the “Released Cargill IRW Growers”) from any Released Claim. The Releasing Parties further agree that they will not file, or encourage others to file or pursue, any claim against the Released Cargill IRW Growers arising out of, or relating to, the Released Claims. However, in the event a non-party to this Consent Judgment files or pursues any claim against the Released

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

20. As of the Effective Date, all claims asserted in relation to this action by Cargill against third party defendants, including the City of Tahlequah and the City of Westville, which are currently severed and pending in Case No. 06-cv-503-GKF-SH (N.D. Okla.), shall be dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A).

21. 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 and Released Cargill IRW Growers but to release fully and completely the Released Parties and Released Cargill IRW Growers. Therefore, in consideration of the payments and commitments by Cargill specified in this Consent Judgment, the State agrees to a reduction of any damages awarded against other defendants to this lawsuit on a joint and several basis to the extent of the pro-rata share of the liability of the Released Parties and Released Cargill IRW Growers. It is specifically intended that the Released Parties and Released Cargill IRW Growers 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 further agrees and intends that this Consent Judgment 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 and Released Cargill IRW Growers regarding the Released Claims.

VIII. ATTORNEYS' FEES AND COSTS

22. Provided that this Consent Judgment is entered without material modification of the terms negotiated by the Parties and is not thereafter successfully challenged or vacated, Cargill waives and releases any right available to it at law to seek to recover its attorney's fees, costs and expenses incurred in connection with this lawsuit from the State. The State reserves the right to apply to the Court, at an appropriate time, for an award of its attorney's fees and litigation costs incurred in connection with this lawsuit. The State further 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 between the State and Cargill. The Parties agree, however, that Cargill's liability under any award or determination for costs or attorneys' fees by the Court, including by not limited to any award arising from the December 19, 2025, Judgment, has been fully satisfied and released under the terms of this Consent Judgment, provided that this Consent Judgment is not successfully challenged. For the avoidance of doubt, the Parties further agree that Cargill'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 the State, has been fully satisfied and released under the terms of this Consent Judgment.

IX. TERM AND TERMINATION

23. Unless extended by the Court in accordance with Paragraph 24, the obligations of Cargill under the Consent Judgment and the Court's continuing jurisdiction over this settlement will automatically terminate ten (10) years from the Effective Date ("Term").

24. Prior to expiration of the Term, the State may petition the Court to retain jurisdiction beyond the Term only upon a showing by clear and convincing evidence that Cargill has materially violated the provisions of this Consent Judgment and has failed or refused to adequately cure or remedy such violations within a reasonable time following Cargill's receipt of written notice of such violations. The State shall bear the burden of proof as to any petition asking for a continuation of the Court's jurisdiction beyond the Term. If the State prevails on such petition, the Court shall retain jurisdiction to the extent necessary for Cargill to cure or remedy the violations proven by the State and the provisions of this Consent Judgment will remain in force until Cargill shows by clear and convincing evidence that Cargill has cured or remedied such violations.

X. NOTICE

25. Any notice, report, or other communication required or permitted under this Consent Decree 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
(405) 521-3921
gentner.drummond@oag.ok.gov
amie.ely@oag.ok.gov
garry.gaskins@oag.ok.gov
jennifer.lewis@oag.ok.gov
IRW-poultry-settlement@oag.ok.gov

To Cargill:

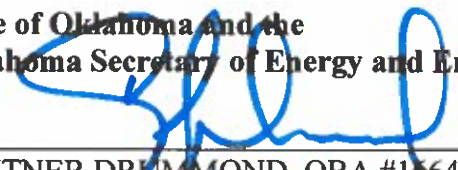
Cargill Meat Solutions Corporation
Attn: Chief Legal Counsel
825 East Douglas Avenue
Wichita, KS 67202
mark_quayle@cargill.com
brian_sheern@cargill.com

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 25.

XI. SIGNATORIES

26. Each Undersigned signatory certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Judgment and to execute and legally bind such Party to this document.

State of Oklahoma and the
Oklahoma Secretary of Energy and Environment


GENTNER DRUMMOND, OBA #18645

Attorney General

GARRY M. GASKINS, II, OBA #20212

Solicitor General

JENNIFER L. LEWIS, OBA #32819

Deputy Attorney General

OFFICE OF ATTORNEY GENERAL STATE OF OKLAHOMA

313 N.E. 21st Street

Oklahoma City, OK 73105

Direct: (405) 521-3921

gentner.drummond@oag.ok.gov

M. David Riggs, OBA #7583

Kristopher E. Koepsel, OBA #19147

Riggs, Abney, Neal, Turpen, Orbison & Lewis

502 West 6th Street

Tulsa, OK 74119

(918) 587-3161

Robert A. Nance, OBA #6581

W.A. Drew Edmondson, OBA #2628

Riggs, Abney, Neal, Turpen, Orbison & Lewis

528 N.W. 12th Street

Oklahoma City, OK 73103

(405) 843-9909

Louis W. Bullock, OBA #1305

Bullock Law Firm PLLC

110 W. 7th Street

Tulsa, OK 74119

(918) 584-2001

Frederick C. Baker, admitted *pro hac vice*

Cynthia Solomon, admitted *pro hac vice*

Kristin Hermiz, admitted *pro hac vice*

Madeline Becker, admitted *pro hac vice*

Motley Rice LLC

28 Bridgeside Boulevard

Mount Pleasant, SC 29464

(843) 216-9186

Counsel for Plaintiffs

Cargill, Inc. and Cargill Turkey Production, LLC



MARK T. QUAYLE

Associate General Counsel

Cargill, Inc.

825 E. Douglas Avenue

Wichita, KS 67202

(316) 291-3430

Mark_quayle@cargill.com

John H. Tucker, OBA #9110

Colin H. Tucker, OBA #16325

Rhodes, Hieronymus, Jones, Tucker & Gable, PLLC

2 W. 2nd St., #1000

Tulsa, OK 74103

(918) 582-1173

Christopher H. Dolan, admitted *pro hac vice*

Jeffrey P. Justman, admitted *pro hac vice*

Aaron D. Van Oort, admitted *pro hac vice*

Jacob D. Bylund, admitted *pro hac vice*

Faegre Drinker Biddle & Reath LLP

2200 Wells Fargo Center, 90 South Seventh Street

Minneapolis, Minnesota 55402, USA

On Behalf of the Defendants,

Cargill, Inc. and Cargill Turkey Production, LLC

IT IS SO ORDERED this ____ day of February 2026.

HON. GREGORY K. FRIZZELL
UNITED STATES DISTRICT JUDGE

ATTACHMENT A

Oklahoma Nutrient Sensitive Watersheds

