

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

_____	)	
UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 90-cv-229 (SPB)
	)	
ROBERT BRACE, and	)	
ROBERT BRACE FARMS, Inc.,	)	
	)	
Defendants.	)	
_____	)	

**UNITED STATES’ OPPOSITION TO DEFENDANTS’ MOTION FOR EXTENSION OF  
TIME TO COMPLETE DISCOVERY**

When this Court entered the original scheduling order in this matter more than seven months ago, allowing discovery over the United States’ objection, it noted that the provided deadlines were “generous” and warned the parties that “any motions for extension of time w[ould] be viewed critically by the Court.” ECF No. 146. Viewed critically or not, Defendants have not shown the requisite good cause for the discovery extension they seek. For the reasons that follow, the United States opposes Defendants’ Motion for Extension of Time to Complete Discovery (ECF No. 199):

1. First, Defendants previously agreed to an expert disclosure schedule that would allow expert discovery to be completed by the close of discovery. On December 5, 2017, Defendants agreed that the parties would make initial expert disclosures on December 18, 2017, and rebuttal expert disclosures on January 12, 2018. Ex. A. On January 5, 2018, the United States agreed to extend the deadline for rebuttal expert disclosures to January 19, 2018, to accommodate Defendants’ need for more time. Ex. B. The parties reached this agreement after the United States sent repeated unanswered requests to establish expert disclosure dates on at

least four occasions, September 13, 2017, September 20, 2017, September 21, 2017, and October 11, 2017. *See* Ex. C, D, E, F. On December 5, 2017, Defendants finally responded to yet another request dated November 30, 2017. Ex. A. When Defendants agreed to the December 18, 2017, and January 12, 2018 disclosure deadlines, they knew well that two federal holidays (December 25, 2017 and January 1, 2018) fell during that period.<sup>1</sup>

2. Second, Defendants have not shown that an extension is necessary in *this case*. The United States has designated one expert in this case, Civil Action No. 90-229: Dwayne Edwards, Ph.D., P.E., whose expert report was attached as Exhibit A to Defendants' Motion for Extension (ECF No. 199-1). Dr. Edwards' report was procured in response to claims by Defendants regarding flooding on Defendants' property, including in an August 5, 2015 report by Andrew Johnson that Defendants have now served as an expert report in this matter. Ex. G. Defendants accordingly required no additional time to find and retain a rebuttal expert in this case; they have had a relationship with Mr. Johnson since at least 2015 and indicated on November 16, 2017, that Mr. Johnson would be serving as expert in this case, *see* Ex. H. Moreover, Defendants have known since October 16 and 17, 2017 that the United States would be offering Dr. Edwards as an expert regarding the flooding claims because Dr. Edwards participated in a site inspection of the Consent Decree area on those dates.

3. The two other experts mentioned in Defendants' motion, Dr. Robert Brooks and Mr. Peter Stokely, are experts designated in Civil Action 17-006, which relates to the Marsh Site, *not* the Consent Decree area that is at issue in *this case*. Defendants' professed need to retain

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<sup>1</sup> Defendants' statement that this amounts to "two-weeks of successive federal holidays," ECF No. 199 ¶ 10, is a gross exaggeration. Nevertheless, Defendants do not explain why these two holidays prevented them from retaining an expert capable of proffering rebuttal within the generous discovery period.

rebuttal experts to address Dr. Brooks' and Mr. Stokely's reports in the 17-006 action is no reason to extend the discovery period in *this* action.

4. Third, no additional time is needed to depose the parties' experts in this matter. The United States has informed counsel for Defendants that Dr. Edwards is ready and available to be deposed any time between now and January 29, 2018. Defendants need only notice the deposition. Further, Defendants have indicated that Mr. Johnson is available to be deposed on January 31, 2018, and the United States has issued a notice and subpoena accordingly.

5. Finally, no additional time is needed to depose Defendants' final two fact witnesses, Karl Gross and Scott Dudzik of the Pennsylvania Department of Environmental Protection. Although Defendants have had ample time to conduct these depositions in the more than seven months of discovery thus far, the United States nevertheless will consent to these witnesses' depositions occurring outside the discovery period so long as they will be completed by February 7, 2018.

In sum, Defendants have not established good cause to extend the approximately eight-month discovery period any further. The United States respectfully requests that the Court deny Defendants' motion for extension of time to complete discovery.

Respectfully requested,

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DATED this 18th day of January, 2018.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on January 18, 2018, I sent a true and correct copy of the foregoing United States' First Set of Request for Production to Robert H. Brace to counsel for Defendants via First Class mail and E-mail at the following address.

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