

IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA)	
and)	No. 01cv00072-MV-WPL
STATE OF NEW MEXICO, ex rel. STATE)	
ENGINEER,)	ZUNI RIVER BASIN
Plaintiffs,)	ADJUDICATION
v.)	
)	Subfile Nos. ZRB-4-0064
A & R PRODUCTIONS, et al.)	ZRB-5-0009
Defendants.)	
)	

**DEFENDANTS’ UNOPPOSED MOTION TO EXTEND DISCOVERY AND
DISPOSITIVE MOTIONS DEADLINES BY 38 DAYS**

Defendants Joseph Dean Bond and Billie Ethna Bond, through their counsel, Marshall J. Ray, hereby move for an order amending the Scheduling Order and extending the discovery and dispositive motions deadlines by 38 calendar days. As grounds, Defendants state as follows:

1. On November 17, 2015, the Court entered the Scheduling Order setting forth the case management deadlines for Subfile Nos. ZRB-4-0064 and ZRB-5-0009 (Doc. 3132).

2. The Scheduling Order outlines the following deadlines:

(a) Termination of Discovery: March 15, 2016;

(b) Defendants’ Motions for Summary Judgment: April 15, 2016;

(c) Plaintiffs’ Responses to Summary Judgment and Cross Motions for Summary Judgment: May 16, 2016;

(d) Defendants’ Reply Supporting Summary Judgment and Responses to Cross Motions for Summary Judgment: May 31, 2016; and

(e) Plaintiffs’ Reply in support of Cross Motions for Summary Judgment: June 15, 2016. (Doc. 3132).

3. Throughout these subfile actions and related proceedings, Defendants have self-represented.

4. Recently Defendants decided to engage legal counsel to represent them in these matters.

5. The attorney representing Defendants, Marshall J. Ray, is transitioning from state government practice at the New Mexico Department of Workforce Solutions to private practice and has extensive duties during the New Mexico Legislative Session.

6. Mr. Ray will complete his legislative session responsibilities, which include the signing session immediately following the close of the Legislative Session, and will be available after February 26, 2016.

7. To permit Defendants' counsel to effectuate his transition to private practice and to complete all of his duties as state agency counsel, Defendants at this time request that the Court amend the Scheduling Order by adjusting discovery and dispositive motions deadlines by calendar 38 days as follows:

(a) Close of Discovery: April 22, 2016;

(b) Defendants' Motions for Summary Judgment: May 23, 2016;

(c) Plaintiffs' Responses to Summary Judgment and Cross Motions for Summary Judgment: June 23, 2016;

(d) Defendants' Reply Supporting Summary Judgment and Responses to Cross Motions for Summary Judgment: July 8, 2016; and

(e) Plaintiffs' Reply in support of Cross Motions for Summary Judgment: July 22, 2016.

8. The Federal Rules of Civil Procedure require a showing of good cause and the Court's consent to amend a scheduling order. *See* Fed. R. Civ. P. 16(b)(4).

9. The appropriate factors to determine whether to amend the scheduling order and extend the discovery and dispositive motions deadline are:

1) whether trial is imminent, 2) whether the request is opposed, 3) whether the non-moving party would be prejudiced, 4) whether the moving party was diligent in obtaining discovery within the guidelines established by the court, 5) the foreseeability of the need for additional discovery in light of the time allowed for discovery by the district court, and 6) the likelihood that the discovery will lead to relevant evidence.

SIL-FLO, Inc. v. SFHC, Inc., 917 F.2d 1507, 1514 (10th Cir. 1990) (citing *Smith v. United States*, 834 F.2d 166, 169 (10th Cir. 1987)).

10. Under the factors articulated in *SIL-FLO, Inc.*, an extension of the discovery and dispositive motions is proper and in the interests of justice.

11. The trial date is not imminent, as it has not yet been scheduled (Doc. 3132).

12. Plaintiffs have been consulted and do not oppose this motion.

13. Defendants have not shown a lack of diligence in this matter and they have obtained legal counsel to assist them in litigating this matter.

14. Although it is not clear at this time what additional discovery might be needed, Defendants have not been dilatory during the discovery process, and the discovery period has not yet ended in this matter. The extensions requested in this motion would allow Defendants' counsel to complete his transition to private practice and close out his work for the legislative session.

Accordingly, Defendants Joseph Dean Bond and Billie Ethna Bond respectfully request that the Court:

(a) extend the discovery and dispositive motions deadlines by 38 days consistent with the proposed dates above,

and

(b) grant any other relief the Court deems appropriate.

LAW OFFICES OF MARSHALL J. RAY, LLC

/s/ Marshall J. Ray
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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of February, 2016, I filed the forgoing electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Electronic Filing to be served electronically.

/s/ Marshall J. Ray
Marshall J. Ray