

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

FRIENDS OF MERRYMEETING BAY AND)	
ENVIRONMENT MAINE,)	
)	
Plaintiffs)	
)	
v.)	Civil Action No.
)	2:11-cv-00036
)	
MILLER HYDRO GROUP,)	
)	
Defendant)	

**DEFENDANT MILLER HYDRO GROUP’S REPLY IN
SUPPORT OF MOTION TO ENLARGE DISCOVERY AND
RELATED DEADLINES, INCLUDING THE EXPECTED
DATE OF TRIAL, BY THIRTY DAYS AND A REQUEST
FOR CONFERENCE WITH THE COURT**

Defendant Miller Hydro Group (“Miller Hydro”), by and through its undersigned counsel, hereby submits its Reply in support of its Motion to Enlarge the Discovery Deadline, and Related Deadlines, Including the Expected Date of Trial (the “Motion”), by thirty days.

Plaintiffs’ Opposition Brief raises two arguments: that (i) Miller Hydro’s request to enlarge the deadline to designate experts by three days would extend the deadline beyond the time during which Miller Hydro’s counsel will be on vacation, and (ii) Miller Hydro is responsible for any logjam in conducting multiple depositions during the last two weeks of March 2012. Each of these arguments is addressed below.

I. Pre-Planned Vacation Schedules Require a Modest Three-Day Enlargement of Time to Designate Experts

Plaintiffs argue that Miller Hydro’s counsel will “obviously” be working the week of February 20, and, therefore, should be able to complete Miller Hydro’s expert reports by February 28, 2012. (Opposition Brief at 1-2.) Plaintiffs have over-simplified the matter.

February 20, 2012 was a federal holiday; the remainder of the week is “school vacation”

week in Maine. Lead counsel for Miller Hydro will be away on a pre-planned vacation from February 22-26, 2012. Co-counsel for Miller Hydro will be away on a pre-planned vacation day on February 24, 2012. Complicating matters is the fact that counsel has to attempt to coordinate work on expert reports with multiple individuals, some of whom also are on vacation during this week.

Miller Hydro is not seeking an unreasonable extension of time. It is merely seeking a three-day enlargement of time beyond what Plaintiffs have agreed to already to account for the logistical complications created by vacation schedules. Granting that enlargement of time will cause Plaintiffs no prejudice.

II. Miller Hydro Has Not Caused a Logjam in Discovery

Plaintiffs claim that Miller Hydro has created difficulties in meeting the current discovery deadline by “hanging back and not scheduling depositions.” (Opposition Brief at 2.) This simply is not true.

Miller Hydro has not yet scheduled depositions of Plaintiffs’ witnesses for reasons that were beyond Miller Hydro’s control. Miller Hydro did not receive Plaintiffs’ document production in a usable format until February 13, 2012. It is not unreasonable for Miller Hydro to refrain from conducting depositions until it has had an opportunity to review these documents. That many of Plaintiffs’ documents proved to be within the public domain is unavailing – Miller Hydro did not know what documents Plaintiffs had, or did not have, until those documents were produced.¹ Furthermore, it is not unreasonable to expect that Miller Hydro would not schedule

¹ Plaintiffs’ argument that Miller Hydro was, or could have been, “fully aware” of the contents of documents held by Miller Hydro’s consultant, HDR, is another red herring. As outlined in Miller Hydro’s Motion, HDR produced approximately 18,546 pages of hard copy documents, and approximately 9,000 e-mails to Plaintiffs. At least in the case of the hard copies, this production was selected by Plaintiffs from larger files that were made available to Plaintiffs. It was not unreasonable for Miller Hydro to wait to see which documents would be selected by Plaintiffs for production to do a substantive review of the HDR documents, rather than inefficiently conducting a substantive review of a larger file containing documents that seemingly will have no bearing on the case.

depositions of Plaintiffs' experts until Plaintiffs' expert reports have been fully vetted by Miller Hydro's own consultants.

Plaintiffs' Opposition Brief ignores that the Court's February 9, 2012 Order requires that the depositions of Plaintiffs witnesses be consolidated in all of the FOMB Dam Cases. Pursuant to the Order, counsel for the parties must confer regarding procedures for conducting consolidated depositions before they can even discuss scheduling the depositions. This is a very recent development that had nothing to do with Miller Hydro's tactics.

Miller Hydro is seeking a mere thirty-day enlargement of deadlines. This is a modest request given the facts outlined above, and in Miller Hydro's Motion. Altering the pre-trial and trial deadlines by thirty days will enable the parties to overcome scheduling difficulties that were not of Miller Hydro's making, and will cause no prejudice to Plaintiffs. Nor, contrary to Plaintiffs' suggestion, is the survival of the Atlantic Salmon species dependent on the Court conducting a trial in July 2012 instead of August 2012.

Conclusion

For the reasons described above, Defendant Miller Hydro Group respectfully requests that the Court enlarge the pre-trial deadlines, and the expected date of trial as outlined in its Motion.

Dated: February 21, 2012

Respectfully submitted,

/s/ Theodore A. Small

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of February 2012, I electronically filed *Defendant Miller Hydro Group's Reply in Support of its Motion to Enlarge Discovery* with the Clerk of the Court using the CM/ECF system that will send notification of such filing(s) to the following:

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