

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

CITY OF KENNETT, MISSOURI,)
)
 Plaintiff,)
)
 vs.)
)
 UNITED STATES ENVIRONMENTAL)
 PROTECTION AGENCY, et al.)
)
 Defendants.)

Case No. 1:14-CV-33-SNLJ

MEMORANDUM and ORDER

This matter is before the Court on the parties’ joint scheduling plan (#45) filed in response to this Court’s order allowing plaintiff to file expert reports in support of its motion for summary judgment. The parties disagree regarding the timing of the cross-motions for summary judgment. Plaintiff City of Kennett, Missouri, seeks simultaneous briefing by each party such that each party files its motion and memorandum in response, followed by simultaneous responses in opposition, and replies in support. Defendant, the United States Environmental Protection Agency (“EPA”), advocates for staggered briefing and asks that the plaintiff file its motion and memorandum first, followed by defendant’s response and memorandum in support of its own motion, the plaintiff’s reply and response, and finally defendant’s reply. Plaintiff objects to defendant’s tactical advantage resulting from the staggered schedule and observes that the original case management order contemplated simultaneous briefing. That original case management

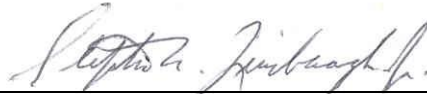
order, however, anticipated that the parties would be operating from a known administrative record with any supplements being made well before the dispositive motions were due. Now, the parties may file their expert reports with their motions. The Court finds that a staggered briefing schedule --- resulting in only four total memoranda instead of six memoranda contemplated by the simultaneous briefing schedule --- is appropriate, particularly in light of the EPA's defensive position facing the uncertainty of numerous challenges to the TMDL. In addition, the Court notes that it will entertain motions for sur-memoranda if necessary, which should address plaintiff's other tactical concerns.

Accordingly,

IT IS HEREBY ORDERED that the EPA's requested staggered summary judgment schedule is **ADOPTED**.

IT IS FURTHER ORDERED that plaintiff shall file its motion for summary judgment and supporting memorandum (not exceeding 35 pages) and affidavits no later than January 15, 2016. Defendant shall file its cross-motion for summary judgment and supporting memorandum (not to exceed 35 pages) and affidavits no later than April 14, 2016. Plaintiff shall file its reply in support of its motion and its opposition to defendant's cross-motion (not to exceed 25 pages) as well as any supporting rebuttal affidavits no later than June 13, 2016. Defendant shall file its reply memorandum (not to exceed 25 pages) and rebuttal affidavits no later than August 12, 2016. Any sur-memoranda must be filed no later than September 2, 2016.

Dated this 19th day of October, 2015.



STEPHEN N. LIMBAUGH, JR.
UNITED STATES DISTRICT JUDGE